

EXHIBIT 8

Picard v. Merkin

J. Ezra Merkin 2-24-15

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:

BERNARD L. MADOFF INVESTMENT Adv.Pro.No.
SECURITIES LLC, 08-01789 (BRL)
Debtor.

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IRVING H. PICARD, Trustee for the
Liquidation of Bernard L. Madoff
Investment Securities LLC,
Plaintiff, Adv.Pro.No.
09-1182 (BRL)

v.

J. EZRA MERKIN, GABRIEL CAPITAL,
L.P., ARIEL FUND LTD., ASCOT
PARTNERS, L.P., GABRIEL CAPITAL
CORPORATION,

Defendants.

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VIDEOTAPED DEPOSITION OF J. EZRA MERKIN,
as reported by Nancy C. Bendish, Certified Court
Reporter, RMR, CRR, and Notary Public of the
State of New York, at the offices of Baker
Hostetler, 45 Rockefeller Plaza, New York, New
York, on Tuesday, February 24, 2015, commencing
at 9:47 a.m.

1 Q. Yes. Would it be fair to say at
2 least ten or more times in the Madoff matter?

3 MR. STEINER: Objection to form.

4 A. Do you mean in depositions?

5 Q. Yes.

6 A. I don't really know the number,
7 doesn't sound unreasonable.

8 Q. Okay. So, you know the drill, if
9 you have a problem with any of my questions, I'd
10 like you to just tell me that and, as I said
11 earlier, I'll try and clean them up for you.

12 A. Okay.

13 Q. Why don't we start at the
14 beginning, so to speak, with the benefit of your
15 educational background, starting with college.

16 A. I attended Columbia College in the
17 City of New York and I graduated in 1976.

18 Q. While in college, did you take any
19 business courses?

20 A. I really don't remember. I don't
21 think so.

22 Q. Okay. And thereafter, what did
23 you do after you graduated from college?

24 A. I attended law school.

25 Q. And where did you go to law

1 school?

2 A. I went to Harvard Law School and I
3 graduated the class of 1979.

4 Q. Did you take any -- and we're
5 going to explain what I mean by this --
6 business-related courses while at Harvard Law
7 School? By way of example, accounting for
8 lawyers?

9 A. I took accounting in law school.

10 Q. Okay.

11 A. I took corporations, corporate
12 finance. Just not quite sure what is
13 responsive.

14 Q. Yeah, that's fair.
15 How about securities laws, the
16 Securities Act of 1933, for example?

17 A. I think I took a class that
18 covered aspects of securities regulation.

19 Q. And would that include also the
20 Exchange Act of 1934, to your recollection?

21 A. It certainly might have. I just
22 don't remember precisely.

23 Q. Okay. Were there any other -- I
24 may have overlooked some business courses that
25 you may have included within your law school

1 curriculum. Could you tell me if I have.

2 A. I just don't want to -- I took
3 first year contracts. I'm not sure that is what
4 you have in mind.

5 Q. Well, it's a start, yeah.

6 A. Okay. I guess I took first year
7 property. I imagine New York City trust and
8 estates. The ones I mentioned before --

9 Q. That's fine.

10 A. -- corporations, corporate
11 finance, some form of securities regulation,
12 accounting, those are the ones that come to my
13 mind at the moment. There may have been others.
14 I don't remember at this time.

15 Q. Upon your graduation, what did you
16 do next? From law school that is, I'm sorry.

17 A. I took the bar exam in the summer
18 of 1979 and started in the fall of 1979 at a law
19 firm in New York City called Milbank, Tweed,
20 Hadley & McCloy.

21 Q. How did you get to Milbank?

22 A. Well, I had worked at Milbank the
23 prior summer, which would have been the summer
24 of 1978, so I was coming back to Milbank. I
25 wasn't getting there for the first time.

1 A. Which aspects?

2 Q. The sale of stock, stock exchange.
3 Making markets.

4 A. I couldn't say yes and I couldn't
5 say no. I guess I could say I really don't
6 remember. The Exchange was a regulated entity.
7 Some of the materials -- some of the assignments
8 focused on the regulatory status of the exchange
9 and the ongoing -- and it's ongoing nature.

10 Q. Let me try a different way, which
11 may be helpful.

12 What did you do -- did there come
13 a time when you left Milbank?

14 A. Yes.

15 Q. And how long were you at Milbank?

16 A. More or less three years.

17 Q. And what, if anything, did you do
18 after that?

19 A. I went to work for a small money
20 management firm that had started up not very
21 long before I got there, called Halcyon
22 Investments.

23 Q. And what do you mean by the term
24 "money management firm"?

25 A. A firm that had been given to it

1 the bankruptcy analysis that covered or that
2 accompanied an analysis or the attractiveness of
3 the debt piece, the more likely the original
4 lender might just say the easiest way to
5 restructure this from my point of view is to
6 pick up the telephone and sell it. And if we
7 thought we could buy it at a sufficiently steep
8 discount to what our analysis thought it would
9 be worth at the end, that made an attractive
10 investment. Put another way, I think there was
11 an attempt to try hard to invest across the
12 board of the portfolio not only, but
13 significantly in securities that were undergoing
14 some restructuring that had an analyzable
15 conclusion. And a lot of that analyzable
16 conclusion was driven by legal analysis and a
17 lot of the analysis was driven by legal
18 training, if not specifically legal analysis.

19 Q. Let's move on, if we could, to did
20 there come a time when you left Halcyon?

21 A. Yes.

22 Q. And when was that?

23 A. That would have been later in the
24 1980s. So I'd say something like 1985 or maybe
25 a year, half a year earlier, half a year later,

1 something like that.

2 Q. And what, if anything, did you do
3 next?

4 A. I joined a firm that had been
5 started by someone who I had been an associate
6 of and he had been an associate of mine at
7 Halcyon. The name of that firm was Gotham
8 Capital. The name of that person was Joel,
9 J-o-e-l, Greenblatt. And I joined him in his
10 operation more or less at the time I indicated.

11 Q. This is a very broad question, but
12 perhaps it will work. What did Gotham do?

13 A. So, Gotham did a lot of things
14 that we had done at Halcyon. The tray of
15 attractive candidates for the portfolio had
16 evolved, which is very usual in the investment
17 business, or usual enough. So that, very
18 roughly, and from memory that is not to be
19 depended on in this particular -- in this
20 particular period of time or set of questions,
21 Halcyon might have had as much as 75 or 80
22 percent in bankruptcies and 20 or 25 percent in
23 merger arbitrage when I got there, and that
24 could have flipped over a two- or three-year
25 period. Not deliberately. You go where the

1 next line.

2 A. Um-hum.

3 Q. What is your understanding of the
4 term "options arbitrage"?

5 A. Well, substantially all of the
6 assets of Ascot at that point were managed by
7 the Madoff organization and Bernie Madoff
8 specifically and they were engaging in what I
9 would consider options arbitrage. Meaning
10 arbitraging prices of -- the prices of options
11 and the prices of the securities to which those
12 options can be converted into or exercised into
13 or assigned to. So that it's your arbitraging
14 price relationships between underlying
15 securities and options struck against those
16 securities.

17 Q. Okay. And then skip over
18 Cerberus. It then says "managing partner" and
19 it has your name.

20 A. Um-hum.

21 Q. Were you the managing partner --
22 well, you've said Capital Group was just a term
23 used. Of what organizations were you managing
24 partner?

25 A. One that comes to mind I'm pretty

1 don't want to read it to you, Mr. Merkin.

2 A. Um-hum.

3 Q. Just in general terms what are you
4 describing here? Is this a particular fund or a
5 strategy?

6 A. Yeah, so I think this is still
7 Gabriel Capital LP.

8 Q. Okay.

9 A. And would have some applicability,
10 therefore, to Ariel Fund Limited. We ran those
11 two reasonably or even more than -- ran those
12 two, you know, reasonably pari passu. So this
13 presents what it calls the warp and the woof.
14 You're familiar with those terms?

15 Q. I am indeed. I'm also familiar
16 with the term the weft.

17 A. The weft?

18 Q. Yeah.

19 A. Which is?

20 Q. The weft is actually what I think
21 you call the woof. But that's a time for
22 another day.

23 A. Okay. So --

24 Q. The warp and the woof is the
25 fabric.

1 Q. Well, I'm gonna ask you that but,
2 yes, I think I understand.

3 A. So we don't have to -- do you want
4 me to address that now?

5 Q. Yeah, what is your understanding
6 of what the Ascot strategy was?

7 MR. STEINER: And I'm going to
8 interrupt both of you before the court reporter
9 does, that you're getting too talking over each
10 other. And so maybe I can't direct Mr. Sheehan,
11 but I will tell you, you've got to let him
12 finish before you start responding.

13 MR. SHEEHAN: Did you get all
14 that?

15 THE REPORTER: I did.

16 MR. SHEEHAN: She did. We're
17 good.

18 A. Question on the table is?

19 Q. Now you got me confused here.
20 There it is.

21 Q. What is your understanding of what
22 the Ascot strategy was?

23 A. So for those parts of the Ascot
24 portfolio over which Mr. Madoff had discretion,
25 which were substantially all the assets for most

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1 of the period but not always all of them, so
2 that's now what I mean by Ascot. Now I'm just
3 addressing the Madoff strategy. They're not the
4 same things always.

5 Originally we were long a stock,
6 I'm gonna say IBM, long a put struck underneath
7 the stock, and short a call struck over the
8 stock. So that if IBM traded at, take an
9 example we've tossed around on other occasions,
10 say at 92, we might be long 100 shares of the
11 stock, short the equivalent -- at 92, short the
12 equivalent in calls, the equivalent number of
13 calls struck at 95, and we collected some money
14 for being short those, right? And we bought a
15 put at 90. And when we were doing individual
16 stocks and options, which was only at the
17 beginning, we were never partially hedged. In
18 other words, you may know enough about options
19 contracts to know that -- how the multipliers
20 are, they're not the same as in stocks.

21 Q. Um-hum.

22 A. So we were long and short the
23 correct amount of options. We weren't open, we
24 weren't -- we didn't take an exposure anywhere.

25 So, what that meant is from --

1 what that meant is we had limited risk and
2 limited upside. We were selling off the upside
3 above the strike at which the call was sold.
4 And if you want to add in the premium that's
5 collected, right, so if we sold the call at 95
6 and collected a dollar, the stock could go to a
7 thousand, we stop making money at 96. We also
8 stop losing money beneath 90.

9 So, I would call that a hedged
10 position, in a very natural way. I think that
11 is a hedged position. When we're doing
12 individual stocks we might have had, to pick a
13 characteristic but not necessarily specific
14 example, 30 of those at a time. 30 different
15 stocks with puts and calls. Long the stock,
16 long the put and short the calls.

17 So I would say it was a portfolio,
18 a basket of hedged positions, fully hedged
19 positions. Doesn't mean riskless, means hedged.

20 Q. Um-hum, okay.

21 A. Those evolved over time to
22 something from which they emanated and there's a
23 resemblance, but it's a different thing. The 35
24 grew to probably over 50 positions. But instead
25 of having the individual puts, going back to my

1 example IBM, we no longer had IBM puts and were
2 no longer short IBM calls. We had 50 stocks,
3 50-ish stocks in the S & P 100 and were long
4 puts on the S & P 100 and short calls on the
5 S & P 100.

6 So that the relationship that
7 existed is we had -- we were always long puts,
8 always short calls and for the, for the long,
9 instead of the stock we had a basket of stocks,
10 all of whom were in the S & P 100.

11 So I would consider that a fully
12 hedged position. Not riskless; fully hedged.

13 Q. This is a little out of the area
14 but I've got to ask it.

15 A. Sure.

16 Q. In your entire experience with
17 Ascot, did anybody ever exercise the call?

18 A. Exercise the call. Well, we were
19 short -- were we ever -- I don't remember. I
20 just have to differentiate the answer.

21 In the individual stock days, say
22 the IBM example, it's just too long ago for me
23 to remember.

24 Q. All right.

25 A. That's not to say no, but I just

1 But that did not make me a Registered Investment
2 Advisor.

3 Q. I understand that. Let me ask
4 that question.

5 Did you or any of the entities
6 that you controlled ever become a Registered
7 Investment Advisor?

8 A. No. I never registered. I don't
9 know about things I controlled because they've
10 had subsequent histories, but I never
11 registered.

12 Q. I'll ask them later. Okay.

13 The -- was GCC the entity that
14 you're referring to? Do you know what I mean by
15 that?

16 A. Yes. If I know what you mean by
17 that, yes.

18 Q. Okay. Did GCC --

19 A. I meant that to be a serious
20 answer.

21 Q. I took it as such. And did --
22 just so everybody else is in on it, was GCC the
23 investment advisor for Ascot, Ariel and Gabriel?

24 A. No. GCC -- again, GCC was the
25 investment advisor to some of those and not all

1 of those, because it was only the investment
2 advisor to the offshore funds. Only the
3 offshore funds had investment advisors. That's
4 the structure of these and many other offshore
5 funds.

6 So Gabriel Capital LP was a
7 domestic limited partnership and had a managing
8 partner, who is your humble narrator, and Ariel
9 Fund Limited had an investment advisor, GCC,
10 which was a company controlled by the managing
11 partner of Gabriel Capital LP, previously
12 identified as your humble narrator.

13 Q. Okay, that's good. Thank you.

14 Does the term "prime broker" mean
15 anything to you?

16 A. The term "prime broker" is a
17 phrase used on Wall Street that can refer to one
18 of many different functions, perhaps only one,
19 perhaps several, perhaps all. It's -- it means
20 a lot of things to a lot of different people.
21 Means a lot of different things to different
22 people.

23 Q. What does it mean to you?

24 A. Prime broker?

25 Q. Prime broker.

1 Q. No, no. Just initial and
2 monitoring. The difference.

3 A. If I misunderstand you, you'll
4 tell me.

5 Q. Take your time.

6 A. What I take you to mean, or take
7 the phrase to mean, initial due diligence is due
8 diligence that precedes the actual inception of
9 an investment.

10 Q. Um-hum.

11 A. And -- meant to say a second
12 later, but as you continue to hold the
13 investment, there's monitoring due diligence.
14 But it may mean something else to somebody else
15 and it may mean something else in a different
16 context.

17 Q. Again, just asking your
18 understanding, do you have an understanding of
19 the term "scalability"?

20 A. Scalability?

21 Q. Yes.

22 A. Again, if we're not back at that
23 peer, we're talking about things --

24 Q. No, we're not there.

25 A. Scalability generally means, to

1 strategies that can't be scaled or have
2 difficulty being scaled, in which case if
3 they're left small enough, they do great.

4 Q. Have you ever heard the expression
5 "The God of Size comes to visit everybody"?

6 A. Yes.

7 Q. Have you used that phrase?

8 A. Probably.

9 Q. When you used it, what did you
10 mean by it?

11 A. It connects to scalability, which
12 means you can't -- if you keep growing, growing
13 and growing assets, you will see some impact on
14 performance. Doesn't necessarily mean that
15 performance will disappear, it doesn't
16 necessarily mean that performance won't be
17 entirely satisfactory.

18 As a broad concept, it's just
19 easier to push around a smaller amount of assets
20 than a larger amount of assets. And so if you
21 really really really get big your rates of
22 return are somewhat likely to fall.

23 If you remember the table that we
24 looked at that showed steadily decreasing
25 return, that would perhaps be a concept -- a

1 result of assets growing. It might also be an
2 interest rate environment changing, it might be
3 changes in the strategy. But assets under
4 management, the basic question so what are you
5 running, is an issue that relates to
6 scalability.

7 That said, there are strategies
8 that do better scaled up. And they are, I
9 think, not as frequent as other ones, but there
10 are strategies that require a critical mass of
11 capital for sheer position in the market or else
12 they don't work, or they work a lot less well.

13 Q. Okay.

14 THE WITNESS: If you're going to
15 take a minute, I was going to go to the men's
16 room.

17 MR. SHEEHAN: No, no, we'll take
18 five minutes. I told you, any time you need
19 time.

20 THE VIDEOGRAPHER: Off the record
21 1:44.

22 (Recess taken.)

23 THE VIDEOGRAPHER: Back on 2:01.

24 BY MR. SHEEHAN:

25 Q. Mr. Merkin, while we were off the

1 92 when he died, and I didn't have that many
2 further discussions that I remember with him on
3 that subject.

4 Q. Okay. Let's go back to your
5 meeting, if I may, with Mr. Madoff.

6 So, how was it that you came to
7 meet with him in the first place?

8 A. I don't remember the circumstances
9 of the first meeting and I don't remember when
10 the first meeting was, exactly, and I have a
11 vague memory that I met Bernie downtown, meaning
12 he -- it may have been before he moved his
13 office uptown and I don't know when he moved his
14 office uptown. I have a vague memory that I met
15 him still when he was on Wall Street. I mean
16 that literally, that he had an office on a
17 street called Wall Street. I don't mean the
18 financial district.

19 Q. I understand.

20 A. It's in the financial district but
21 if there was there was one. This was the
22 beginning of our due diligence process and the
23 discussions that I remember more clearly are
24 already uptown at Third Avenue in the east 50s.

25 Q. What were you doing at that time?

1 Were you still with Gotham when you met with
2 Bernie?

3 A. This would have been after
4 Gotham -- I don't remember. I don't remember
5 specifically, as I say, the first investment
6 was -- of mine, was at -- through 61M
7 Associates. 61M was a, call it an account or
8 call it an investment vehicle that was managed
9 out of the Scheuer family office, which had
10 possibly also migrated uptown but for many years
11 was at 61 Broadway, and then at the Empire State
12 Building.

13 61M was an account that invested
14 money with the Madoff -- with Bernie Madoff, and
15 had a number of persons who had contributed to
16 61M for that purpose. And the person who ran
17 the Scheuer family office as an entirety and a
18 61 account was a gentleman named Leon Meyers.

19 Q. How was it that you came to make
20 that investment in 61?

21 A. Leon and I had developed a pattern
22 of, you know, sort of talking about managers we
23 liked or managers we thought were interesting.
24 I'm not sure that he was the first person --
25 certainly among the very first, I don't know how

1 that dovetailed with my dad, but he was
2 certainly -- it was certainly -- that was
3 certainly the vehicle through which I first
4 invested, and that was just me. In other words,
5 or maybe it was the kids or something, but it
6 wasn't for the fund and it wasn't for any
7 additional limited partners.

8 Q. Okay. I may not -- I don't think
9 I do remember this. Did you invest in 61 before
10 the meeting with Bernie or after?

11 A. I invested in 61 I -- you know
12 what, I don't remember precisely. The answer is
13 about the same time. Ask me what took place
14 first and what took place second, I don't
15 remember.

16 Q. All right.

17 A. I think of both the investment
18 personally only and the meeting with Madoff, the
19 meetings with Madoff as part of the initial due
20 diligence that preceded any investments on the
21 part of the funds, and was sort of just the
22 beginning of the due diligence process.

23 Q. So, again, returning to page 3,
24 the second line in that first full paragraph
25 says: Discuss Mr. Madoff's trading strategies

1 trying to catch, as I say, market turns.

2 Q. Okay.

3 A. This is my understanding as best
4 as I can remember it today -- let me just
5 finish -- at that time. You're asking me
6 initial meetings and what did I think. So this
7 is my memory today of what I thought then. That
8 understanding to some extent evolved over time,
9 but I think I am honestly saying that that's
10 what I remember of then rather than what I
11 remember of things that I've even learned -- I
12 mean, obviously what I've learned since this,
13 but I'm saying this is not something that I
14 think I remember from one proceeding or another
15 that has taken place since 2009.

16 Q. Okay. During this --

17 A. Which is what, I assume, what
18 you're asking.

19 Q. I understand. I am asking that
20 and we will get to whatever evolution that had
21 taken place.

22 A. Okay.

23 Q. When you were having this
24 conversation, the one we're talking about right
25 now, the initial one, and you're talking about

1 his trading strategies, you used the term
2 "market timing." Could you tell me what you
3 mean by that phrase?

4 A. Well, what I meant by that phrase
5 is -- I'm just going to say in a typical year we
6 would be in and out of the market, I'll stick
7 with my three to six, if we can say three to six
8 to four -- to four to eight times. So that we
9 would catch -- that's what I mean by catching a
10 turn.

11 Q. Catch the turn.

12 A. Among other things, it made the
13 strategy tax inefficient. It's a good way to
14 understand what I thought was going on, because
15 realized long-term gains, which are heavily
16 taxed advantaged, do not come out of this kind
17 of strategy, or very unlikely to. You need a
18 longer holding period. You need a shorter
19 holding period for long term if you're gonna be
20 doing this three or four times a year.

21 His average holding period was
22 maybe, I don't know the number, so it's silly to
23 speculate, but I don't know, eight weeks,
24 something like that, maybe longer. But nothing
25 close to get you to long term.

1 So, what I thought of the strategy
2 as a whole was that he had a knack for catching
3 market turns. It was market turns done on a
4 hedged basis with very good executions. That's
5 what I would have seen as the strategy.

6 Q. When you say he had a knack, do
7 you mean by that he could intuit the market
8 term?

9 A. So, I'm not sure that's entirely
10 what I mean. I've learned over time -- now this
11 didn't all happen -- what I'm about to say
12 didn't all happen the first meeting.

13 Q. Of course.

14 A. But every now and then we would
15 have a flat period, nothing happening, dry as a
16 bone, sitting on the sidelines doing nothing.

17 Q. When you were doing nothing, where
18 was the money?

19 A. Treasuries.

20 Q. All right.

21 A. You may not think of that as
22 nothing but I'm saying that's what I meant by.

23 Q. Right now it's nothing, but go
24 ahead. Well, it's turning in.

25 A. You know what, the Swiss will

1 charge you for that. The government still pays
2 you something. That may change, too, but that's
3 at the moment snapshot.

4 So every now and then I would say,
5 Bernie, we're going to miss the market, you
6 know, if this market's got to catch a rally,
7 whatever, whatever. I learned over time that
8 his near term market timing sense was much
9 better than mine and that when he thought we
10 might catch a turn he was almost all the time
11 right and when we disagreed either about getting
12 in or getting out he was very often right.

13 He emphasized, I don't remember
14 this specific to the first conversation at all,
15 what I'm about to say to you, but he emphasized
16 certainly over time and maybe even at the first
17 conversation that the elements of -- no, the
18 indicators and the algorithms that helped create
19 his trading program, what you quote in here
20 trading strategies and I mean the same by that,
21 so I'll just say trading strategies rather than
22 to introduce a new phrase.

23 Q. Understood.

24 A. Were very much computer assisted
25 in the sense that he spent a lot of money on

1 software that would help get a sense of market
2 movements from the order flow in the wholesale
3 business. That's very different to my mind than
4 what you call skimming, and certainly to
5 front-running and, importantly as to your last
6 question, that his gut feeling about which way
7 the market was going to go controlled those
8 signals from his programs and rather than the
9 other way around.

10 In other words, it was a very very
11 sophisticated system that was subject to his, if
12 you want to put it somewhat, perhaps too
13 colloquially, his gut check.

14 Q. As part of your -- this
15 interrogatory answer we're looking at, as part
16 of your due diligence, as I understand it, did
17 you as part of your due diligence ask for any
18 insight or transparency into the algorithm that
19 gave him the ability to have -- to time the
20 market?

21 A. The ultimate expression of the
22 algorithm, ultimate expression of the algorithm,
23 is the tickets.

24 Q. Right.

25 A. In other words, the algorithm

1 A. The Madoff relationship in our
2 organization was heavily managed by Mike and me.
3 I'm not saying to the absolute exclusion of
4 everybody else, but it was basically Mike and
5 me.

6 Q. Let's just go back just to that
7 last answer, the penultimate answer, actually.
8 That is, when you say you went to Mr. Madoff
9 with other investors and you talked to other
10 investors, did that -- well, let me start first
11 with the other investors. The other investors,
12 did they know anything more than you knew?

13 A. From time to time, sure.

14 Q. What did they know, they told you
15 that you didn't know from talking to Mr. Madoff?

16 A. I think from time to time they had
17 insights into the process that I might have
18 learned of from them in the first instance.

19 Q. Such as?

20 A. Than from him.

21 Q. Such as?

22 A. I'm not sure. There's
23 something -- if you leave that question with me
24 I'll try to come up with something more
25 concrete.

1 Q. We'll come back to it. What I'm
2 looking at is, by talking to others and by
3 bringing people to talk to Madoff, was there
4 anything different going on there than you just
5 talking one on one with Madoff?

6 MR. SIEV: Objection to the form.

7 A. There might have been -- if you
8 meet somebody for the first -- I talked to
9 Bernie somewhere between 10 and 15 times a year.
10 Spoke or met with him between 10 and 15 times a
11 year for many years.

12 Q. Right.

13 A. I'm going to say roughly, very
14 roughly once a month. It wasn't always every
15 month and those 10 or 15 times were not
16 separated by the same amount of time every
17 week -- every conversation. But the importance
18 of listening to Bernie present what he did to
19 someone who met him for the first time is always
20 helpful. Because you don't refer to things you
21 talked about five years ago or seven years ago
22 or last week, and it's not -- it's less
23 conversational and it's an introduction to a
24 fresh pair of eyes, a fresh pair of ears, a
25 thinking head and a critical acumen, and that

1 can be very, very, very additive.

2 Q. You indicated -- I'm sorry, I'm
3 moving around. I'm going to page 5 of this
4 document, 354. Down in the last paragraph.

5 A. Just one second.

6 Q. Sure, take your time.

7 A. Just trying to get there. Sorry.

8 Q. It's a paragraph that starts,
9 "Mr. Merkin also knew." And if you travel on
10 down, you start -- you discuss the SEC. I want
11 to be sure I don't miss something here. Sorry,
12 I might have jumped over something.

13 A. It's okay.

14 Q. Boy, your memory place tricks
15 here.

16 A. Would you say that for the record,
17 please.

18 Q. I would readily admit it to the
19 jury. Just ask Brian Williams.

20 Let's go back to page 5 and the
21 SEC.

22 A. Last paragraph?

23 Q. Yeah, last paragraph. I'm going
24 to just read it. "In one of their many
25 conversations, Mr. Madoff reported that the SEC

1 had visited BLMIS's offices to conduct reviews
2 eight times in 16 years, and that gave you
3 additional comfort about Mr. Madoff's bona
4 fides." Do you see that?

5 A. I do.

6 MR. STEINER: It wasn't exactly a
7 correct reading, but close enough.

8 MR. SHEEHAN: All right. I stand
9 by the record, not by what I said, all right?
10 Just suggesting a question.

11 Q. But can you tell me what you
12 discussed that gave you comfort?

13 A. Unless I'm missing, it says -- the
14 specific reference to the SEC reviews?

15 Q. Yes. Did he tell you what they
16 did?

17 A. Oh. I thought you were saying
18 something about the comfort.

19 Q. No.

20 A. He had either scheduled or
21 surprise visits from the SEC with some
22 regularity and some frequency, perhaps more on
23 the regular than on the surprises. He was very
24 proud of his overall compliance record and just
25 sort of a clean bill of health with occasional

1 references to one or two smaller things, and it
2 certainly meant a great deal to me that the SEC,
3 with the power of subpoena, with the ability to
4 spend days at the firm, which is how he
5 presented it, came away and said, you know,
6 thank God for Bernie. And that was very
7 significant to me.

8 Q. My question, though, was, maybe I
9 wasn't clear so I'll restate it.

10 Did he tell you what exactly the
11 SEC did during these visits?

12 A. Yeah. He -- his operation was
13 reviewed by the SEC. It is my memory on the --
14 on what I thought of as the two sort of aspects
15 of the business.

16 Q. What I'm asking you for is
17 specifically, for example, did he tell you that
18 they asked for access to DTCC to verify the fact
19 that he had the stock he said he had?

20 A. I don't remember that
21 conversation.

22 Q. Did he ever represent to you that
23 that happened?

24 A. I truly don't remember.

25 Q. Okay. Page 6 if you would,

1 broker. The customer doesn't execute the trade,
2 the broker does.

3 Q. In terms of his ability to execute
4 a trade, how would you rate Mr. Merkin? You're
5 Mr. Merkin.

6 A. I am.

7 Q. You like --

8 (Indiscernible crosstalk)

9 A. Very low.

10 Q. Mr. Madoff, how would you rate
11 him?

12 A. I think the strategy in part was
13 implemented through very good execution. Not
14 uniformly good execution, but very good
15 execution.

16 Q. What do you mean by that?

17 A. I guess several things. One is
18 costs. In other words, what we were paying
19 Mr. Madoff to execute. Had he charged,
20 hypothetically, twice what he charged, the
21 strategy would have been that much less
22 profitable to us. Same trades, different cost
23 structures would have left us with a different
24 return.

25 Q. Right.

1 A. Secondly, when we -- by and large
2 when he wanted to get in, he got in. And by and
3 large when he wanted to get out, he got out.
4 That's called execute.

5 Q. You say therefore, and maybe I'm
6 wrong, so correct me, is there a relationship
7 between market timing and execution?

8 A. Well, I know you -- there's a
9 relationship between every strategy and
10 execution.

11 Q. Right.

12 A. So you're saying something
13 particular, not unique but something unusual
14 that's individual to market timing?

15 Q. Meaning that you, through your
16 algorithm and your knack, you pick a time but
17 you must execute it within that time frame, do
18 the two go together? In other words, if do you
19 think the time is now but your execution lags
20 behind and you don't get the trade done, do you
21 miss the turn?

22 A. So that's what I was alluding to.
23 When he wanted to get in he seemed able to get
24 in. There was not a lot of talk from Mr. Madoff
25 over the years of I saw the window, I had the

1 Q. Earlier today we were talking
2 about monitoring due diligence. My question is
3 did you ever do monitoring due diligence on
4 BLMIS, on behalf of any of your funds?

5 A. Yes.

6 Q. What did that monitoring due
7 diligence consist of?

8 A. Some of these things we have
9 talked about before the break and perhaps even
10 before then, but if one is approximately 10 or
11 15 conversations a year, conversations either in
12 person or on the phone, were meant to continue
13 to monitor and continue to perform due
14 diligence.

15 I just want to make sure he's
16 okay. Yes, he is. Are you okay? Okay, sorry.
17 I thought you had a problem.

18 Was a form of continuing due
19 diligence on the Madoff organization and the
20 organization of the Madoff function. That is,
21 we didn't just get on the boat, wave farewell
22 after we started investing. There were
23 numerous, numerous conversations.

24 Madoff's role in the affairs of
25 Yeshiva University was such that I was likely to

1 bump into him then a couple times a year for
2 that. And there was always or almost always an
3 opportunity to ask him something that I wasn't
4 sure about in terms of where the strategy --
5 whether it had been executed properly or where
6 the strategy might be headed to next.

7 Madoff's continued and growing
8 success and prominence in the securities
9 industry was very significant. He did end up in
10 the position he achieved at NASDAQ, as its
11 chairman, and he went to Washington for hearings
12 for testimony.

13 I remember an occasion when he and
14 the president of the stock exchange and a former
15 chairman of the SEC were basically the three
16 persons who congressional committees wanted to
17 speak to. That all goes to various and
18 different forms of due diligence.

19 Continued to talk to investors,
20 continued to talk to investors of his not
21 through us, who I thought were thoughtful and
22 insightful investors, bringing investors to see
23 him was a big part of what we were after.

24 Various events that took place in
25 the securities industry mattered to me a great

1 asked me the first question. And the third
2 question, self-clearing is a question I got from
3 time to time about Madoff.

4 Q. Didn't you -- you were handling
5 for Ascot, let's just stick with that, current
6 version, both combined, all right? Or the
7 version near the collapse. And you're the
8 managing partner, right?

9 A. Correct.

10 Q. And GCC is doing what for Ascot at
11 that point?

12 A. Well, Ascot Fund is then a limited
13 partner in Ascot Partners LP. So GCC, as the
14 investment advisor to Ascot Fund Limited,
15 basically invested in Ascot Partners LP on
16 behalf of the entire fund. It was the single
17 largest LP in our limited partnership.

18 Q. Did you feel as though in that
19 position, just looking at Bernie's statements,
20 that is his confirmations, his customer
21 statements and his reputation, that that was
22 adequate due diligence?

23 MR. STEINER: Objection, form.

24 A. I'll add a fact, I'll add a
25 question and I'll answer your question.

1 this before, yes.

2 Q. Okay. Do you know where the --
3 can't think of a better way to put this, do you
4 know where the document comes from?

5 A. Well, I have to take more time,
6 but if this document stops speaking as of '96,
7 which I'm guessing it does because the upper
8 left-hand date, right, plus I'm doing this
9 quickly and I shouldn't do it this quickly, the
10 table on 220 starts at '90 and ends in August
11 '95.

12 Q. Yup.

13 A. And I don't -- and ditto 221. And
14 ditto 222. Well, 223 is not that relevant.
15 Another quick look. But certainly ditto 224. 5
16 and 6 is just kind of neutral, though.
17 Histogram comes back.

18 I'm guessing I got this thing 20
19 years ago. I'm trying to remember -- I think it
20 describes the performance of a, what is referred
21 to in the street occasionally as a Madoff feeder
22 fund and I'm not sure which. But the return
23 pattern looks a lot like one, with some
24 differences and exceptions.

25 Q. Directing your attention to

1 Q. Yes.

2 A. I don't remember.

3 Q. Did you do, at your fund at GCC,
4 for example, did you do these types of analyses
5 at GCC? The ones that we see here?

6 A. The comparison to the S & P 500?

7 Q. Yes, like for Ascot and for others
8 did you do these types of analyses?

9 A. Yeah, well we looked at certainly
10 one this morning.

11 Q. That's right, okay.

12 A. Okay.

13 Q. So, do you recall looking at --

14 A. Therefore, yes. Just to be clear.

15 Q. Right. Did you -- I'm sorry.

16 Do you recall looking at these in
17 1996 and having any reaction to them?

18 MS. ARCHER: Object to the form.

19 A. I don't remember what my reaction
20 was when and if I looked at it in 1996. It's in
21 the file, I wrote on it, I'm sure I looked at it
22 when I got it or reasonably soon thereafter, and
23 I don't remember what my reaction was in 1996.

24 Q. Okay. You made a statement
25 earlier when you were identifying the document

1 that it looked like a Madoff feeder fund in
2 terms of the performance. In some ways it did
3 and in some ways it didn't. Could you tell me
4 in what ways you see the information here as
5 reflective of the performance of a Madoff fund.

6 A. Well, clearly I must have thought
7 something because I wrote "Madoff" on it and put
8 it in the Madoff file. So if you asked me what
9 I thought in 1996 I presume I wrote "Madoff" on
10 it in 1996 and thought it aspects of the Madoff
11 feeder fund.

12 Looking at it now, I don't
13 quite -- I might still think so. I just -- it
14 isn't -- I'd have to look at it a little more
15 carefully, but it isn't either as correlated or
16 as uncorrelated as certain aspects I would think
17 of as a Madoff feeder fund. I haven't studied
18 it. I may have then but I have to study it now.

19 Q. Do you have any recollection of
20 why you kept this document?

21 A. No. I mean it might have -- no.
22 I might have liked some of the comparisons, I
23 might have liked the presentation, I might have
24 thought that he was a Madoff feeder fund. I
25 loosely was interested in the world of Madoff

1 paraphrased.

2 I think -- let's put it this way,
3 to the extent that I can make some sense of
4 this -- I don't really -- if we discussed --
5 Madoff was, was, I don't think Madoff failed to
6 answer too many questions certainly that I put
7 to him.

8 Where he would say that's -- that
9 that is a subject that he considers somewhat
10 proprietary is what you called the algorithm.
11 In other words, he wasn't that interested in
12 training people -- he used to say, I'm not that
13 interested in training people in Madoff. And by
14 that he meant to say, in the algorithm. In
15 other words, this is the thing that we do that
16 we think is proprietary, it comes out of the
17 totality of what we spend on the computer
18 systems and the order flow and it lets us judge
19 these turns. That was something that he would
20 answer and consider proprietary.

21 So I'm just guessing -- doesn't
22 even relate to this, so I don't know. I've
23 spent five minutes looking at this document, I
24 wouldn't put this at the top of the list of what
25 he got wrong. I think the top of the list is

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In Re:

BERNARD L. MADOFF INVESTMENT Adv.Pro.No.
SECURITIES LLC, 08-01789 (BRL)
Debtor.

-----x

IRVING H. PICARD, Trustee for the
Liquidation of Bernard L. Madoff
Investment Securities LLC,
Plaintiff, Adv.Pro.No.
09-1182 (BRL)

v.

J. EZRA MERKIN, GABRIEL CAPITAL,
L.P., ARIEL FUND LTD., ASCOT
PARTNERS, L.P., GABRIEL CAPITAL
CORPORATION,

Defendants.

-----x

CONTINUED VIDEOTAPED DEPOSITION OF
J. EZRA MERKIN, as reported by Nancy C. Bendish,
Certified Court Reporter, RMR, CRR, and Notary
Public of the State of New York, at the offices
of Baker Hostetler, 45 Rockefeller Plaza, New
York, New York, on Wednesday, February 25, 2015,
commencing at 9:42 a.m.

1 BLMIS account held by Ascot Partners?

2 MS. ARCHER: Object to the form.

3 A. My issue is with your use of the
4 word "other." Which did, before you get to the
5 others?

6 Q. Let me see if any of these names
7 mean anything to you.

8 A. Sure.

9 Q. Are you familiar with the Eric
10 Bruell Trust?

11 A. Eric?

12 Q. Eric Bruell.

13 A. I know something about that.

14 Q. Was there a time in which Gabriel
15 Capital Corporation was managing the Eric Bruell
16 Trust? The Eric Bruell Trust BLMIS account?

17 MR. STEINER: Objection to form.

18 A. I don't -- I guess I really don't
19 parse the question. Eric Bruell Trust, as I
20 remember it, had an account directly at Madoff.

21 Q. Okay.

22 A. Which the Madoff office was
23 managing, as I take your sense, your use of the
24 word "manage." So I'm not sure what you mean by
25 was Gabriel Capital Corp. managing an account

1 for Eric Bruell at Bernard Madoff. We did not
2 manage anything at Bernard Madoff. We played no
3 role in that office.

4 Q. Did you administer -- well, let me
5 go through these names.

6 A. I think we might have introduced
7 the account or might have suggested to the
8 trustees of the account that that might be an
9 attractive option for their trust. And then did
10 our best to keep an eye on it.

11 Q. Did you charge a fee to the Eric
12 Bruell Trust?

13 A. We might have at some point.

14 Q. Manny H. Weiss, are you familiar
15 with Mr. Weiss?

16 A. Yes.

17 Q. Did Mr. Weiss have, to your
18 knowledge did Mr. Weiss have a personal -- did
19 Mr. Weiss have a BLMIS account?

20 A. Some entity related to him I think
21 did.

22 Q. All right. And did there come a
23 time in which Mr. Weiss closed that account and
24 transferred its assets to Ascot Partners?

25 A. I believe that some family member

1 of his became a limited partner in Ascot
2 Partners LP.

3 Q. Are you familiar with Richard L.
4 Hirsch?

5 A. Yes.

6 Q. Did Mr. Hirsch have a BLMIS
7 account, to your knowledge?

8 A. Yes, I believe he did, yes.

9 Q. Same question, did he --

10 A. Yes.

11 Q. -- close and then come to Ascot
12 Partners as a limited partner?

13 A. I'm not sure anything -- either he
14 or his family entity became a limited partner in
15 Ascot Partners LP.

16 Q. Are you familiar with the E-b-r-o,
17 NV, or Ebro, N.V.?

18 A. I think I know -- I know -- I'm
19 familiar with the name.

20 Q. What is Ebro, N.V.?

21 A. It's an offshore account. N.V.

22 is a -- not sure -- I can't remember. Anyway,
23 it is in some foreign language the equivalent of
24 like Ltd or Inc. and it's, therefore, in all
25 likelihood, an offshore corporation. And it had

1 Q. And those entities were Dunraven,
2 Heaton, Langham Trading and Ebro, N.V., correct?

3 A. Right. There are four such
4 letters.

5 Q. Do you know what the purpose of
6 this letter was?

7 A. Let me just read it.

8 Yes. I mean, the letter kind of
9 is pretty self-explanatory. Do you want me to
10 summarize it?

11 Q. Just tell me what you believe the
12 purpose of the letter was.

13 A. I think the purpose of the letter
14 was to inform Mr. Ben Dror of the three
15 paragraphs of information that it tells him
16 about. There's no purpose beyond what the
17 letter says.

18 Q. Do you see in the first paragraph
19 it says that during 1992 you maintained, you
20 referring to Dunraven on page 6003, maintain a
21 managed account at Bernard L. Madoff & Company
22 that was administered by Ariel Management
23 Corporation?

24 A. Um-hum.

25 Q. What is your understanding of the

1 relationship between Ariel Management Company
2 and Dunraven's BLMIS account in 1992?

3 A. I'm not sure exactly what my
4 memory of it is today in 1992, but this first
5 sentence may be an accurate way of saying it.
6 It was managed at Madoff and administration
7 relative to that was done by our management
8 company.

9 Q. And what is meant by
10 administration?

11 A. I'm not sure I remember what I was
12 intending in late 1992.

13 Q. And then you see in the next
14 paragraph --

15 A. It may be -- it may have involved
16 a number of different things, including
17 specifically oversight of the accounts and
18 compliance with the strategy. I think that was
19 one of the important issues back then.

20 Q. And you see in the next paragraph
21 you charged a one percent fee to Dunraven?

22 A. Yes.

23 Q. And by you, I mean GCC.

24 A. Correct.

25 Q. If you look in the third

1 paragraph, you see where it says, sort of in the
2 middle, your managed account with Madoff &
3 Company will be liquidated and the proceeds will
4 be used to purchase participating shares of
5 Ascot Fund Limited?

6 A. Yes.

7 Q. To your recollection is that what
8 occurred with these four entities?

9 A. If these entities are all offshore
10 entities?

11 Q. Yes.

12 A. If they're all offshore
13 entities --

14 Q. Yes.

15 A. -- then instead of having four
16 different accounts managed at Madoff in their
17 account, individual account names, they would
18 have been participants in a pooled vehicle that
19 was Ascot Fund Limited.

20 Q. Do you see in the next sentence it
21 says Ascot's sole asset will be a managed
22 account at Madoff & Company.

23 A. Um-hum.

24 Q. At the time, and -- at this time
25 was Ascot's investment strategy to manage a --

1 should actually be January 1st, 1993, given the
2 date of this letter?

3 A. I believe that's correct.

4 Q. Can you turn to Trustee's 366,
5 which is the next document. And if you could
6 turn to what's -- the Bates number which is 722.

7 A. Is that the bottom right-hand
8 corner?

9 Q. In the bottom right-hand corner.

10 A. Okay. Just a moment. Okay.

11 Q. Do you -- can you identify -- can
12 you identify Trustee's 366 for me. Have you
13 seen this before?

14 A. Are you talking about 722 now?
15 You asked me to turn to a specific --

16 Q. Specifically on page 722. Have
17 you seen this letter before?

18 A. Yes.

19 Q. Can you tell me what this letter
20 is?

21 A. This is a letter signed by me
22 dated in late December, and addressed to an
23 entity of which I am a managing and general
24 partner called Gabriel Capital LP. So it's
25 actually written on Gabriel Capital Group's

1 letterhead and is sent to Gabriel Capital LP by
2 Ariel Management Corporation, and then signed by
3 its president.

4 Q. And it's informing Gabriel Capital
5 LP of the same information that we saw in
6 Trustee's 365, correct?

7 A. I would say a parallel movement to
8 a domestic pooled vehicle. Even has the same
9 typo.

10 Q. And if you can turn back to page
11 571.

12 A. 571?

13 Q. I'm sorry. 721.

14 A. Oh, the previous page.

15 Q. The previous page. I'm trying to
16 read it upside down, which is not helpful.

17 A. Doesn't work for me either.

18 Q. Do you recognize this document?

19 A. No. But I might if I look at it.

20 I don't recognize it, but it looks
21 like something that might have been produced by
22 our back office.

23 Q. Does this document reflect the
24 managed accounts that Gabriel Capital
25 Corporation was managing or administrating,

1 sorry, providing administration services for in
2 1992?

3 MS. ARCHER: Object to the form.

4 A. Just one moment, let me have a
5 look.

6 I don't know today anymore. It
7 very possibly -- very likely is, but I can't
8 testify that that's the case.

9 Q. Did you have any discussions with
10 Mr. Madoff regarding the liquidation of those --
11 of the accounts that we talked about in
12 Trustee's 365 and 366?

13 A. I'm sorry?

14 Q. Did you have any conversations
15 with Mr. Madoff regarding the liquidation of the
16 accounts listed in 365?

17 A. The previous document?

18 Q. Yes.

19 A. Yes. You've asked me that before.

20 Q. What were those conversations?

21 A. I don't remember the specifics of
22 the conversation, but we didn't -- I mean, you
23 can't open Ascot Fund and Ascot Partners without
24 asking for account documentation, and in the
25 first instance he's the person I would have

1 Jesselson's name I just mentioned. Not sure
2 else -- not sure what you're asking me beyond
3 that.

4 Q. We'll try to tackle this again at
5 the end of the series of questions.

6 Let's go back to page 2.

7 A. Okay.

8 Q. And we've talked a little bit
9 about Mr. Meyers already. Do you know how long
10 Mr. Meyers had known Mr. Madoff?

11 A. No.

12 Q. Do you recall whether he -- strike
13 that question.

14 Do you know when 61 -- I'm sorry,
15 is it 61M or is it 61 Associates?

16 A. Well, it depends what you're
17 asking. It's both. What are you looking for?

18 Q. What was the entity in which you
19 invested initially with BLMIS?

20 A. I believe 61M. I think it's not M
21 by coincidence.

22 Q. And do you know when 61M made its
23 initial investments with BLMIS?

24 A. Somewhere in the back of my head
25 is a memory that there is a -- I had a -- I have

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1 in a file, and if that's right, surely produced
2 to you, 61M's record with Madoff. And if I have
3 the entire record there, then it would go
4 back -- I mean, these are a series of ifs. If
5 it's there, if it's been produced and if it is
6 exhaustive in the sense that it returns to the
7 first date of their first investment with
8 Madoff, then the answer would be there.

9 If you're gonna ask me if I know
10 that, that year, sitting here I do not. But I
11 can tell you where to find it because we whizzed
12 past it yesterday.

13 Q. Was it in your Madoff file?

14 A. I believe so.

15 Q. And can you describe what the
16 document looks like?

17 A. It's a, it's a column of figures,
18 one set of figures being years, meaning annual
19 dates, and the other one being performance.

20 Q. And does it describe BLMIS as
21 BEMIS, B-E-M-I-S?

22 A. Now you got me.

23 Q. Let me see if I can find that
24 document.

25 Do you know whether 61M

1 market crash, because I remember his quoting
2 something to me the day after the market
3 crashed -- I'm sorry, about the day after the
4 market crashed, which was that the -- the day
5 the market crashed was a very, very, very tough
6 day in the office. The day after was a
7 disaster, and I think that is true.

8 So we're talking about, you know,
9 the later '80s, '86, '87, something like that,
10 but I can't place it with any greater precision.

11 Q. Do you recall when you first --

12 A. He was then running the Scheuer
13 family office. Just to be clear, that is 61
14 Associates. 61 Associates is the name of the
15 Scheuer family office.

16 Q. Thank you.

17 A. 61M is just a sub-account or a
18 function within the office.

19 Q. Do you recall when you first spoke
20 about BLMIS with Mr. Mayer?

21 MR. STEINER: Meyers.

22 Q. Meyers, sorry.

23 A. The day, the time, the weather?

24 Q. Relative to when your initial --
25 when you first met Mr. Meyers --

1 A. Oh, how much time passed?

2 Q. How much time had passed before
3 you started speaking about BLMIS.

4 A. I don't remember.

5 Q. How often would you speak about
6 BLMIS?

7 A. With Mr. Meyers?

8 Q. Yes.

9 A. Over the years?

10 Q. In the initial time frame. In
11 this late '80s time period.

12 A. I don't remember.

13 Q. Did Mr. Meyers tell you that he
14 conducted due diligence on BLMIS?

15 A. I don't remember the nature of
16 those conversations.

17 Q. Do you have any documentation from
18 those discussions?

19 A. Again, I suppose the answer to the
20 question is yes if the note in the file, if
21 that's what it is, that we referred to, say,
22 five or ten minutes ago, so if it's in fact his,
23 and regardless of whether it's B-E-M-I-S at the
24 top of it or not, if it's there, then that would
25 have been something that he would have sent me

1 around that time.

2 One way of determining that is
3 seeing what the last year on that is because he
4 would have sent me something that was reasonably
5 up to date. So, therefore, I'm not testifying,
6 but speculating, those are two different
7 functions, reasonably contemporaneous with the
8 period you're talking about.

9 Q. After your initial conversations
10 with Mr. Meyers, did you have any discussions
11 with him regarding the performance of your
12 respective BLMIS accounts?

13 A. When you say respective, at that
14 time they weren't respective.

15 Q. After your initial discussions,
16 after, in 1990, did you ever have conversations
17 with Mr. Meyers regarding the performance of
18 your respective BLMIS accounts?

19 A. Yes. Yes.

20 Q. What do you recall from those
21 discussions?

22 A. Well, Leon Meyers and I have had
23 conversations about the investment world going
24 back, let's just say, to '85, '86, '87 and have
25 had one as recently as last week. So I have

1 spent all those years talking to Leon, I suppose
2 possibly twice a day, sometimes twice a week,
3 sometimes twice a month, sometimes twice a
4 quarter. I think my guess would be in all
5 instances more frequently than twice a year. So
6 I'm not going to go to twice a year. And Madoff
7 was a theme of our conversations, surely not
8 every one, but was a constant theme of our
9 conversations. Performance would certainly have
10 been part of it. Most of them focused on
11 visits, telephone calls, understandings, changes
12 in the strategy, possible changes in the
13 strategy, and was he in or was he out, if that
14 was something that we were then talking about.

15 Q. Did you ever have any
16 conversations with Mr. Meyers where you tried to
17 determine how Mr. Madoff chose to enter and exit
18 the market?

19 A. Probably.

20 Q. Did you ever come to any
21 conclusions with Mr. Meyers?

22 A. About what he -- how he --

23 Q. How Mr. Madoff chose to enter and
24 exit the markets.

25 A. You're asking me specifically

1 A. Nothing terribly reliable, the
2 estimate.

3 Q. Did Ms. Manzke tell you that she
4 had conducted due diligence on BLMIS?

5 A. I don't remember the specifics of
6 the conversation, but I remember forming an
7 impression that she had been to the office, that
8 she knew Bernie, that she'd had conversations
9 about the strategies.

10 Q. And did Ms. Manzke send you any
11 documentation in the course of your
12 conversations -- or in the course of your due
13 diligence on BLMIS?

14 A. She may have. I don't remember.

15 Q. Did you take any notes of your
16 conversations with Ms. Manzke?

17 A. I don't remember.

18 Q. If you had taken notes regarding
19 your conversations about BLMIS with Ms. Manzke,
20 would you have put them in your Madoff file?

21 A. If I had them, very likely, yes.

22 Q. The next name on the list on page
23 2 is David Gottesman.

24 A. Gottesman, yes.

25 Q. Gottesman. And prior to 1990 did

1 investor or the funds became investors of
2 Mr. Madoff's.

3 Q. And what did you discuss with
4 Mr. Gottesman?

5 A. Mr. Madoff, his personal
6 reputation, the strategy and so forth.

7 Q. Were you aware at that time, prior
8 to 1990, whether Mr. Gottesman had a personal
9 investment with BLMIS or whether it was in a
10 pooled vehicle or investor money?

11 A. I don't remember.

12 Q. And did Mr. Gottesman tell you
13 that he conducted due diligence on BLMIS?

14 A. I don't remember his saying that
15 in those words. I know Mr. Gottesman and he
16 doesn't -- he's a very careful and methodical
17 investor. In his case, one of the impressions I
18 do remember, he had a very high opinion of
19 Bernie Madoff, the person. Thought he was an
20 innovative person, that some of the things he
21 had done in terms of his challenge of on-board
22 versus off-board trading, his willingness to
23 take on the (indiscernible) of the New York
24 Stock Exchange were all things that
25 Mr. Gottesman knew about, was aware of.

1 It was not quite at this time, but
2 Mr. Gottesman's decision to have Mr. Madoff join
3 the university board and become the chairman of
4 their business school board, become at some
5 point the treasurer of the university, a member
6 of the executive committee, were later events,
7 some of them not that much later because that
8 takes place over a series of years, that I think
9 reflected those views.

10 Q. Did Mr. Gottesman ever share with
11 you how much he invested in BLMIS?

12 A. I don't remember.

13 Q. Would the amount of money that
14 Mr. Gottesman placed with BLMIS be of any
15 significance to you?

16 MS. ARCHER: Object to the form.

17 A. I don't remember. At the time
18 Mr. Gottesman had -- was a very, very, very
19 significant investor in Berkshire Hathaway.
20 It's possible that even then I was aware, or I
21 believe is the case which is he was the largest
22 single individual shareholder in Berkshire other
23 than Mr. Buffett. They're institutional
24 investors, but I think at some point I realized
25 he had a larger -- perhaps was a larger investor

1 than anybody -- any other individual.

2 So nothing -- he was never going
3 to invest with some other person. Just for
4 sheer size, of what he might have had with
5 Berkshire and therefore what he had someplace
6 else was not something that I necessarily asked
7 about or remember hearing about or paid that
8 much attention to. Unless it was trivial, but I
9 don't have any memory that it was trivial.

10 Q. What would be a trivial amount in
11 your mind?

12 A. Then?

13 MR. STEINER: Objection to form.

14 Q. Yes.

15 A. I don't know.

16 Q. The next name on the list is
17 Mr. Gedale Horowitz.

18 A. Um-hum.

19 Q. Again, prior to 1990, did you have
20 a relationship with Mr. Horowitz?

21 A. Yes.

22 Q. How would you describe that
23 relationship?

24 A. I knew him. I knew him probably a
25 little bit less well than I knew Mr. Gottesman

1 but not that much less well. He was a -- had
2 been a figure at the Yeshiva University board.
3 I'm not sure he was still on the board but he
4 was the chairman of their investment committee
5 at that time and I had, by then I'm pretty sure,
6 joined the investment committee. I'm not sure I
7 necessarily was then chairing it. Pardon me.
8 Can't quite place the time sequence today.

9 He ran Solomon Brothers' municipal
10 department, municipals department which, when he
11 ran it, until -- the department was closed, was
12 sort of a huge firm within a firm. He was
13 probably one of the leading spokesmen for the
14 muni industry. The nature of the muni industry
15 is such that government relations are very
16 critical because municipals are debt securities
17 issued by government entities, perhaps without
18 exception. They don't qualify for their tax
19 advantages.

20 What I remember from a
21 conversation with him, very specifically at that
22 time, was the extent to which the regulatory
23 world and the congressional world held
24 Mr. Madoff in such high esteem. That would have
25 been something that would have been important to

1 me and he would have been a very critical figure
2 in knowing, because he was constantly traveling
3 among states, and specifically to Congress in
4 Washington, on governmental relations, because
5 they're so important to the muni industry, and
6 because Solomon was such a dominant name in
7 municipals. And he kept saying to me -- he was
8 the person who said to me at that time, Bernie
9 Madoff, a legend on Wall Street. He said, but
10 you -- but possibly even more so, even more than
11 a legend in Congress. Given Bernie's testifying
12 down there and given the extent to which they
13 had looked to him for certain issues in the
14 securities industry.

15 Q. Did you know whether or not
16 Mr. Horowitz had a -- any kind of a personal
17 relationship with Mr. Madoff at that point in
18 time?

19 A. I don't really remember today
20 whether that was the case or not. I have very
21 specific memories of their knowing each other
22 subsequent to that time. In other words, I can
23 tell you about things subsequent to that, but
24 they did very clearly know each other, but I
25 don't remember today whether I knew that then or

1 whether I didn't know that then.

2 Q. And the reason I'm asking is the
3 conversation that you had with Mr. Horowitz
4 regarding Mr. Madoff's reputation, do you know
5 whether that was based on Mr. Horowitz's
6 personal knowledge or whether he also learned
7 that through -- or he was relaying to you
8 Mr. Madoff's reputation from other people?

9 A. The short answer is I don't know.

10 Q. Do you know whether or not
11 Mr. Horowitz had a personal account with BLMIS?

12 A. I don't know whether he had a
13 personal account at that time.

14 Q. Do you know if he ever had a
15 personal account?

16 A. Oh, I thought you asked me that.
17 I don't know for sure.

18 Q. Do you know whether or not
19 Mr. Horowitz was ever personally invested
20 through any vehicle with BLMIS?

21 A. Yes.

22 Q. What vehicle was that?

23 A. Ascot Partners LP.

24 Q. And when did --

25 A. I'm not sure it was him

1 personally. I think it was family trusts, but I
2 would take that to be something that you would
3 want me to answer yes to in your question.

4 Q. Yes. Do you know when
5 Mr. Horowitz began his investments with Ascot
6 Partners?

7 A. Early on in Ascot history and I
8 can't place the exact date or time or year.

9 Q. Did Mr. Horowitz ever tell you
10 that he conducted due diligence on BLMIS?

11 A. I don't remember.

12 Q. And if you hadn't -- if you -- do
13 you have any documentation regarding your
14 discussions and conversations with Mr. Horowitz
15 regarding BLMIS?

16 A. None that comes to mind, but I
17 don't remember.

18 Q. If you had such documentation, you
19 probably would have put it in your BLMIS file?

20 A. Probably.

21 MR. STEINER: Objection to form.

22 A. But depends.

23 Q. Do you recall a meeting between
24 yourself, Mr. Madoff and Mr. Horowitz in
25 February of 2003?

1 A. And their views were important to
2 the committee.

3 Q. Do you recall anything specific
4 regarding the conversation you had between
5 Mr. Madoff and Mr. Horowitz at this meeting?

6 A. There were some old war stories.
7 That's what makes me think they had a personal
8 relationship because it started with, you know,
9 you son of a gun, do you remember what you did
10 to me in whatever year it was, and you son of a
11 gun, do you remember what you did to me in
12 whatever year it was, and so it didn't sound
13 like these were exactly two people meeting for
14 the first time.

15 So they were discussing figures on
16 Wall Street -- figures meaning persons, not
17 numbers. They were both friendly with industry
18 leaders.

19 Q. Did you --

20 A. I'm -- I just want to make sure
21 that you -- that I'm clear. I'm not sure that
22 this is -- I remember they were both discussing
23 their being interested in a person who either at
24 that time was, had been or was to become the
25 president of the New York Stock Exchange. There

1 was a bit of discussion about SEC chairman but
2 I'm not sure I -- that that is in front of me.
3 That is what I remember their talking about.

4 Q. Did you arrange the meeting
5 between Mr. Horowitz and Mr. Madoff?

6 A. I think so.

7 Q. Do you know why you needed to
8 arrange the meeting if Mr. Horowitz and
9 Mr. Madoff had a personal relationship?

10 A. I think Mr. Horowitz, as either a
11 fiduciary for or as an investor in Ascot
12 Partners LP, thought that that was the way to
13 have the introduction, or have the request made.

14 Q. And did you take any notes from
15 this meeting?

16 A. Again, I'm not sure I was at the
17 meeting or this is my memory of what they told
18 me about the meeting. They meaning mostly
19 Gedale.

20 Q. Other than this one meeting that
21 we were discussing, do you recall any other
22 occasions in which you arranged a meeting
23 between Mr. Horowitz and Mr. Madoff?

24 A. I don't remember if there was a
25 request for another meeting, that didn't happen

1 list is Daniel Hoffert. Am I saying that right?

2 A. Hoffert, I think.

3 Q. Prior to -- again prior to 1990
4 did you have a relationship with Mr. Hoffert?

5 A. Yes.

6 Q. And how would you describe that
7 relationship?

8 A. I knew Mr. Hoffert, he was
9 probably older than I am, and he was someone I
10 knew from our neighborhood and community in New
11 York City when I was growing up. He no longer
12 lived in New York City, probably even then, he
13 lived in Florida.

14 Q. Mr. Merkin, can I ask you not to
15 put your hand to your mouth.

16 A. Okay.

17 Q. Did there come a time in which
18 Mr. Hoffert became an investor with Gabriel?

19 A. Yes. Or some family entity did.

20 Q. And do you recall when you first
21 met Mr. Hoffert to discuss BLMIS?

22 A. I don't remember that, when we met
23 to discuss it. I think he was already in
24 Florida, called me and asked me one or two
25 questions about Madoff. He said he had had -- I

1 think I remember the conversation going
2 something like as follows, because I told him
3 that Gabriel Capital LP -- this is either around
4 the time that he became an investor, or maybe it
5 was earlier. We had discussed the merger
6 arbitrage business and he said to me, you must
7 know somebody else who's in the merger arbitrage
8 business. That's not such an infrequent
9 question. And I said, who'd you have in mind
10 and he said, Bernie Madoff. And I said, I would
11 not think of Bernie Madoff as someone who is in
12 the merger arbitrage business. And he said, no,
13 no, no, not merger arbitrage business.
14 Arbitrage business. He's an arbitrage. "He"
15 meaning Madoff, not Mr. Hoffert. And I thought
16 in some sense that made some sense. And he sent
17 me some form of either a confirmation or perhaps
18 it was a monthly statement to give me some sense
19 of why he called him an arbitrage and what he
20 was doing with him.

21 Q. I'm going you to go back to your
22 Madoff file.

23 A. To the rubber bands?

24 Q. Yes. This will be relatively easy
25 to find.

1 A. I see my discussion of bands has
2 inspired you to take it literally.

3 Q. All the way to the back. It's
4 Bates number 3600.

5 A. 3600?

6 Q. Yes.

7 A. Oh, it's all the way in the back.

8 Q. Yes.

9 A. Oh, is the back.

10 Q. Couple more pages.

11 A. Okay.

12 Q. It's the last document.

13 A. Okay. Do I have a page number on
14 this? 3600?

15 Q. 3600.

16 MR. STEINER: It's cut off on the
17 copy.

18 THE WITNESS: It's there
19 somewhere, bottom right.

20 MR. STEINER: Oh, okay. Sorry.

21 A. Yes, Mr. Song.

22 Q. Do you recognize this document?

23 A. I believe so. Yes.

24 Q. What is it to you?

25 A. Well, now I have to -- it looks

1 like a monthly, actually, statement from the
2 Madoff office, Bernard L. Madoff Investment
3 Securities, to Mr. Hoffert, who is a trustee for
4 some trust that is for the benefit of Daniel
5 Hoffert. That is Mr. Hoffert's first name.

6 So, Daniel Hoffert is a trustee
7 for something that has to do with Daniel
8 Hoffert. Mailed to him I presume, it was
9 certainly addressed to him on South Ocean
10 Boulevard in Palm Beach, which is where
11 Mr. Hoffert lived. I think I mentioned he had
12 moved to Florida, although I knew him from New
13 York.

14 Q. You see the period ending date is
15 January 31, 1993?

16 A. Um-hum.

17 Q. Is this the statement that
18 Mr. Hoffert sent to you that you were discussing
19 earlier?

20 A. I don't quite remember, I don't
21 remember whether the time period I was referring
22 to is then, or earlier. But he didn't send me
23 the statement necessarily the day after we had
24 the discussion.

25 Q. Okay.

400

1 A. The statement came a little bit
2 later. It's two different accounts. I'm just
3 looking to see where the options are. There
4 they are, okay. So they're here. There's a...
5 all right.

6 Q. So, is it your recollection, sir,
7 that you had a conversation with Mr. Hoffert
8 regarding BLMIS prior to 1990 and then
9 subsequent conversation where he sent you this
10 statement?

11 A. I'm not sure that's my
12 recollection, but I think that is likely what
13 happened, just given the dates of all this.
14 That is, it is my recollection that I had a
15 discussion with Mr. Hoffert at the period of
16 time contemplated by this document.

17 Q. The interrogatory response.

18 A. I'm less clear on when this
19 document arrived. But if you consider this
20 outside of that time, which it probably is, then
21 it came later.

22 Q. By necessity it had to come later.

23 A. Right.

24 Q. And did Mr. Hoffert tell you --

25 A. May I just clarify. There may

1 have been an earlier document. That's what I'm
2 trying to get at, that I didn't keep or that I
3 don't have that wasn't in the file, wasn't
4 there. So I'm not sure that this is the
5 document that I was referring to when I said we
6 had the earlier conversations and the earlier
7 document.

8 Q. Okay. Did Mr. Hoffert tell you
9 that he conducted due diligence on BLMIS?

10 A. I don't remember the conversation.

11 Q. And do you know when Mr. Hoffert
12 passed?

13 A. I am guessing around -- the answer
14 is no, I don't. I'm guessing around 2010.

15 Q. Do you know if Mr. Hoffert was
16 asked to testify in any matters regarding your
17 investments in BLMIS?

18 A. I have no idea.

19 Q. If you turn to page 3 of the
20 interrogatory response --

21 A. Okay. Let me put this -- may I
22 seek your advice. Am I putting the rubber bands
23 back on or not?

24 Q. I would not put the rubber bands
25 back on.

1 A. I asked the right person the right
2 question.

3 Q. If you turn to page 3, the first
4 full sentence at the top says you had
5 conversations with customers of BLMIS's market
6 making operations.

7 A. Um-hum.

8 Q. Do you recall who those customers
9 were?

10 A. Well, Fidelity for sure. And I
11 don't remember at the moment who else it might
12 have been. There might have been somebody at
13 Charles Schwab. I just don't remember.

14 Q. Do you recall the particular
15 person you spoke to at Fidelity?

16 A. No.

17 Q. And did Fidelity send you any
18 documentation regarding BLMIS's market making
19 operations?

20 A. I don't think so.

21 Q. Do you know Henry Kaufman?

22 A. I do.

23 Q. How do you know Mr. Kaufman?

24 A. How do I know Mr. Kaufman? I know
25 Mr. Kaufman because he and his wife, for a

1 had met once or twice.

2 Q. And did you ever speak to Mr. de
3 Picciotto regarding investments with BLMIS?

4 A. Directly with him?

5 Q. Yes.

6 A. Not that I recall.

7 Q. Do you know whether Mr. de -- did
8 you know prior to 2008 whether Mr. de Picciotto
9 had any personal investments, meaning him or his
10 family, in BLMIS?

11 A. So, he owned, and for all I know
12 still owns, he and his family own something
13 called UBP, and I certainly knew that UBP had
14 hundreds of millions of dollars with Mr. Madoff,
15 if not more than hundreds of millions of
16 dollars. In part because they had hundreds of
17 millions of dollars there, I suppose, with us.
18 I don't know that he had a -- that part of that
19 was his money or not his money, but I know what
20 Mr. Madoff told me Mr. de Picciotto had with him
21 personally. At the time believed it, I'm not
22 sure that that was necessarily the case. I'm
23 not sure today I would say that that was
24 necessarily the case. But at the time I know
25 what that figure was. And I know that part of

1 the UBP staff and senior people with whom I did
2 spend endless amounts of time due diligencing
3 Mr. Madoff occasionally made references to Mr.
4 de Picciotto being an investor, but didn't say
5 through them, independently, and it's also
6 broadly speaking supporting their investment.

7 Mr. de Picciotto by reputation I
8 think is one of the most gifted investors of his
9 generation. So there was a person that used to
10 go interview him periodically and literally
11 print all of his predictions, kind of, I think
12 used to refer to him as the smartest man he knew
13 or the smartest man in the west or something
14 like that.

15 And over a series of years
16 reading -- he's a very, very (indiscernible)
17 investor. And I just remember once thinking,
18 okay, this one he's really really going to get
19 wrong, and then a year or two later, he was
20 absolutely right.

21 Q. Did you ever attempt to speak to
22 Mr. de Picciotto regarding his investments with
23 BLMIS?

24 A. I think I might have. It was a
25 very brief snatch and didn't really leave a

1 is there isn't one.

2 Q. Okay.

3 A. Did we produce such a document?

4 Q. Not that I'm aware of.

5 A. Okay. And would it have been
6 called for?

7 Q. Yes, it would have.

8 A. Okay, so then I was right. So the
9 answer to my question is -- your question is yes
10 and the answer to my question is no.

11 Q. Okay. I think I've lost who's
12 asking questions.

13 MR. STEINER: You're not the only
14 one.

15 Q. The record will so reflect.

16 A. Right.

17 Q. Mr. Merkin, do you know Zev
18 Wolfson?

19 A. I did.

20 Q. And who is Mr. Wolfson?

21 A. Mr. Wolfson is an immigrant to
22 this country, sometime I think in the late '40's
23 or early '50s, and made a series of fortunes in
24 different businesses, real estate -- well, the
25 real estate business, the construction business,

1 as a backer, very, very early backer of certain
2 funds, as a subsequent early backer heavily into
3 strategies that would broadly be described as
4 private equity strategies.

5 Q. Did you ever have any discussions
6 with Mr. Wolfson regarding your investments with
7 BLMIS?

8 A. With?

9 Q. With Mr. Wolfson.

10 A. My investments with -- just the
11 last.

12 Q. With BLMIS.

13 A. Oh. I thought you said Leon
14 Meyers. I'm sorry, I just didn't hear you. I
15 was going to say, I don't think so.

16 Yes.

17 Q. When did you have those
18 conversations?

19 A. Over a series of years. And they
20 would have been perhaps with him and also with
21 one or another of his sons. It was a family
22 office.

23 Q. Do you know whether or not
24 Mr. Wolfson or his family office had investments
25 with BLMIS?

1 A. I believe they did.

2 Q. Was that the subject of your
3 conversations?

4 A. I'm sure it came up.

5 Q. And do you know whether
6 Mr. Wolfson or his family office conducted due
7 diligence on BLMIS?

8 A. I believe they did.

9 Q. What is the basis for your belief?

10 A. The fact they were there, that
11 they went to -- had been to the office, they'd
12 had conversations, that it was something they
13 had looked into.

14 Q. Did Mr. Wolfson tell you that he
15 had visited BLMIS's offices?

16 A. I don't remember specifically
17 whether it was him or a son and I just don't
18 remember.

19 Q. Did Mr. Wolfson or his son send
20 you any documentation regarding their
21 investments with BLMIS?

22 A. Not that I recall.

23 Q. If you can turn to page 5.

24 A. Still in the same document?

25 Q. Same document.

1 top of that paragraph, the first full paragraph
2 on the page where it says, as an --

3 A. Same paragraph, right?

4 Q. Same paragraph. As an initial
5 part of his due diligence in monitoring, it says
6 that you met with Mr. Madoff 10, 15 times a year
7 by phone or in person. See that?

8 A. Approximately, yes.

9 Q. Was it your practice then to speak
10 to Mr. Madoff about once a month?

11 A. I think I said yesterday that it
12 may well have averaged once a month but I didn't
13 necessarily speak to him once a month and
14 conversations could be bunched.

15 Q. And does that 10 -- is that 10 to
16 15 times a year purely business conversations
17 that you had with Mr. Madoff? In other words,
18 discussions about the investments, about funds?

19 A. You mean with no other subjects
20 ever coming up?

21 Q. Being the primary purpose of the
22 conversation.

23 A. Yes.

24 Q. And so would you have other
25 conversations with Mr. Madoff purely on a

1 personal nature?

2 A. I had conversations with
3 Mr. Madoff about issues that were not -- or
4 subjects that were not business. One was
5 Yeshiva University. He knew less about Yeshiva
6 perhaps than other trustees when they first
7 joined and would ask me a lot, ask me questions
8 about Yeshiva.

9 As a member of the executive
10 committee, he was entitled to a vote on who the
11 new president would be. There were only I think
12 nine such people who had a real vote. And there
13 were one or two occasions in which he
14 interviewed prospective candidates for that job
15 and asked me to join the interview. That's the
16 one or two meetings I can think of that were
17 basically not business.

18 Q. And what year did you start
19 speaking to Mr. Madoff 10 to 15 times per year?

20 A. Don't remember. Fairly early on
21 but I don't remember.

22 Q. Any recollection, starting from
23 1990?

24 A. I can't tell you that in 1990 I
25 spoke to him 13 times, and if I spoke to him

1 nine times it would have been less than 10 to
2 15. But I spoke to him regularly starting
3 fairly early on.

4 Q. And you visited Mr. Madoff in
5 person on occasion, correct?

6 A. Yes.

7 Q. And were those occasions in his
8 office?

9 A. Yes.

10 Q. How often in a year would you go
11 to visit Mr. Madoff's offices?

12 A. Don't remember exactly. Several.

13 Q. So out of the 10 to 15 times --

14 A. A minority.

15 Q. A minority of that 10 to 15 times?

16 A. I would think so, although it
17 doesn't mean I didn't see him at -- later on I
18 would see him, we both attended certain
19 university meetings, so I would see him there.
20 Don't think we met socially very often at all.
21 So an extraordinarily high percentage of my
22 meetings with Bernie were in his office.

23 Q. And where were you -- where would
24 you physically meet with Mr. Madoff in his
25 office? When you say his office, that's kind of

1 how many people I was bringing in to visit, if
2 the number of people exceeded what his own
3 office could hold, let's say comfortably, we
4 would go a couple of doors down and sit in a
5 conference room.

6 So, the answer to your question I
7 guess is all of the above.

8 Q. Yes. Other than Mr. Madoff, did
9 you meet with anybody else during these
10 sessions?

11 A. From his office?

12 Q. From his office.

13 A. No.

14 Q. Mr. DiPascali -- do you know Frank
15 DiPascali?

16 A. No. To answer your question, I
17 believe I met him once. He was passing by and
18 poked his head in the door and Madoff said Frank
19 and I said, that must be Mr. DiPascali.

20 Q. Did you know Peter Madoff?

21 A. I met Peter Madoff maybe once or
22 twice. I remember in a conference room we were
23 sitting with a number of people, he poked his
24 head in the door and mostly wanted to ask Bernie
25 something and all these people here or

1 something.

2 Peter Madoff's son died, his son
3 Roger died in the spring of, I don't remember,
4 and I went with somebody who very much wanted to
5 pay a condolence call, so I joined them and saw
6 Peter then, say within a few days after his son
7 had died. And then I think Peter came -- so I
8 came to these -- get the right name -- Gift of
9 Life Foundation meetings from time to time, and
10 Bernie was the chairman and I think Mrs. Madoff
11 was the vice-chairman of that foundation.

12 So I would see there, you know,
13 some fairly sophisticated investors who were
14 investors of Bernie who were either supporters
15 of the foundation or on the board. Richard Joel
16 who was the president of Yeshiva University
17 would be there, I think Michael Jesselson was
18 there, a son of Ludwig's, and a brother of
19 Benjamin's. I think Fred Wilpon was there, I
20 was there, and I think Bernie was there -- I'm
21 sorry, Peter was there.

22 Q. And you're referring to a specific
23 meeting of the Gift of Life?

24 A. (Witness nods.)

25 Q. Was that meeting in December of

1 2008?

2 A. Yes.

3 Q. Who did you understand -- who did
4 you understand operated the computer algorithm
5 that Mr. Madoff purportedly used?

6 A. I'm not sure I -- in the sense
7 that you mean, I'm not sure I understood that
8 anybody in particular did. If there was such a
9 person, I'm not sure I have a name to report to
10 you.

11 Q. Did Mr. Madoff ever show you how
12 the computer algorithm worked?

13 A. Not that I recall.

14 Q. And did Mr. Madoff ever express to
15 you that he had employees of BLMIS who helped
16 either create the algorithm or monitor the
17 algorithm?

18 A. Mr. Madoff talked about how many
19 employees he had, how many people worked at the
20 organization, including the wholesale end of the
21 business and over time that number went up. So
22 I remember stops along the way, you know,
23 perhaps 85 to 100 and then 200 and then 300.

24 Talked about the computer system,
25 didn't really tell me specifically who was

1 working on the computers and how many did.

2 Talked more about what he spent the year on
3 improving his systems.

4 Q. Did you ever ask to speak to any
5 of the people who operated the algorithm?

6 A. Not that I recall.

7 Q. Did -- in your conversations with
8 Mr. Madoff, either in person or on the phone,
9 did you have any discussions regarding when he
10 planned to come in and out of the market?

11 A. Yes.

12 Q. And did Mr. Madoff, in these
13 conversations, did Mr. Madoff ever offer a
14 projection to you about what the market would do
15 in that month?

16 MR. STEINER: Objection to form.

17 A. I'm sorry, offer me a projection
18 of?

19 Q. Of how the market would perform
20 that month.

21 A. At the beginning of the month he
22 would say the S & P is going to be up one-and-a-
23 quarter percent this coming month, that's a
24 prediction and you can bank on it or something
25 like that?

1 THE VIDEOGRAPHER: Back on 1:28.

2 BY MR. SONG:

3 Q. Mr. Merkin, do you recall in some
4 of your earlier testimony when we were
5 discussing Mr. Madoff's strategy you discussed
6 that Mr. Madoff was trying to catch, catch
7 market turns intra-quarter? Do you recall
8 saying that?

9 MR. STEINER: Objection to the
10 form.

11 A. I don't recall saying that in
12 those words. I think I might well have said
13 that he was trying to catch a turn, but it
14 certainly didn't have to be a turn in a calendar
15 quarter. I might have either said or trying to
16 suggest that he would catch a turn that would --
17 could often last 90 days duration. Another way
18 of saying that is three months, just distinct
19 from a calendar quarter.

20 Q. Do you recall in your experience
21 with Mr. Madoff, was he always able to catch a
22 turn at the beginning of a quarter of a calendar
23 year?

24 A. I don't remember.

25 Q. Was he ever, excuse me, did he

1 ever exit a quarter -- I'm sorry.

2 Were you ever not in treasuries at
3 the end of a quarter of a calendar year?

4 A. Probably --

5 MR. STEINER: End of the quarter
6 or end of the calendar year?

7 MR. SONG: End of a quarter of
8 each calendar year.

9 MR. SIEV: Objection to the form.

10 A. Four quarters a year for however
11 many years, so I'm just gonna say, 50 odd
12 quarters. Were we ever in treasuries -- were we
13 ever not in treasuries at the end of those 50
14 odd quarters.

15 Q. Instead being in the basket
16 position, yes.

17 A. I don't remember.

18 Q. Did you ever check?

19 A. I always knew whether we were
20 invested or not, on any given day, unless there
21 was activity going on, so we were partially
22 coming in and I might have thought we were -- we
23 were fully coming in, I might have thought we
24 were partially coming in. But I checked every
25 single day the P & L and the balance sheet. I

1 mean and the position sheet, were we invested,
2 were we not invested, or how much.

3 Q. Did Mr. Madoff ever tell you that
4 it was important to his strategy to exit the
5 market before the end of a quarter?

6 A. No.

7 Q. It was your understanding that the
8 market turns that he was trying to catch by and
9 large lasted 90 days?

10 MR. STEINER: Objection to form.

11 A. My understanding from a
12 conversation with him?

13 Q. Yes.

14 A. Not that I specifically remember.

15 Q. Before lunch we were discussing
16 the recordings of telephone calls that you had
17 with Mr. Madoff; do you recall that discussion?

18 A. Yes.

19 Q. What mechanism did you use in
20 order to record conversations with Mr. Madoff?

21 A. Pushed the button on my telephone
22 console, whatever you -- telephone box.

23 Q. And was it a tape or a digital
24 recorder or how exactly did it work?

25 A. I told you the extent of what I

1 little bit because there's going to be too much.

2 33 -- this is now toward the end.

3 Q. Yes.

4 A. Oh, here we go, one second. So
5 I'm going to take 3384 to 3387, right?

6 Q. That's correct. If you could just
7 take a minute to look at 3384 to 3387.

8 A. One second, please.

9 You want me to actually read the
10 whole thing?

11 Q. If you can just review it and then
12 tell me if you recognize it and then I'll ask
13 you specific questions.

14 A. Just one moment. Okay.

15 Q. Do you recognize this document?

16 A. Yes.

17 Q. Can you tell me what it is?

18 A. It purports to be a transcript of
19 a part of a conversation starting somewhere in
20 the middle, that I had by telephone with
21 Mr. Madoff on or around May 1st of 2000.

22 Q. And you say on or around May 1st
23 of 2000. The document itself is dated May 1st,
24 2000, correct?

25 A. Yes.

1 Q. Do you have any reason to believe
2 it wasn't, this recording didn't happen on this
3 date?

4 A. I don't know whether it's the date
5 that the transcript was made or the date that
6 the recording took place.

7 Q. Okay. And the first speaker there
8 is listed with the letter B and a colon. Do you
9 see that?

10 A. Yes.

11 Q. Does that indicate that that's
12 Mr. Madoff?

13 A. I think so.

14 Q. And the "E" indicates you,
15 Mr. Merkin?

16 A. Think so.

17 Q. Do you recall why you recorded
18 this conversation with Mr. Madoff on or about
19 May 1st, 2000?

20 A. I -- no.

21 Q. If you -- on page 384, if you go
22 about three-quarters of the way down --

23 A. 84?

24 Q. Yes, first page.

25 A. Yup, I got it.

1 Q. There is a sentence stated by you,
2 says it's one of two possibilities. Do you see
3 that?

4 A. Yes.

5 Q. And you mention -- or you go on to
6 say it's the introduction of a, you have a pair
7 of accounts with us, we operate as one strategy
8 but it comes from two accounts. We would then
9 move from one pair to two pair. Do you see
10 that?

11 A. I do.

12 Q. Does that mean anything to you?

13 A. Today?

14 Q. Yes.

15 A. I'm guessing that that -- I'm
16 guessing that the one pair refers to the Ascots
17 and that the second pair refers to what I'll
18 just call Gabriel.

19 Q. Gabriel and Ariel having accounts?

20 A. Yes.

21 Q. Do you recall earlier we talked --
22 we agreed that Ariel and Gabriel opened BLMIS
23 accounts in August of 2000?

24 A. Okay.

25 Q. So, does that refresh your

1 recollection as to whether this conversation
2 with Mr. Madoff was in regards to opening BLMIS
3 accounts with Ariel -- for Ariel and Gabriel?

4 A. I mean, that's why I was saying
5 what I was saying. We had had that -- you and I
6 had that discussion earlier today.

7 Q. Can you turn to the next page on
8 385?

9 A. Says it's a few months away.

10 Q. Yes. Can you turn to 385. The
11 first entry that's attributed to you, do you see
12 it says "we" and then there's a very long blank.

13 A. Um-hum.

14 Q. Before "weighted." Do you know
15 why there is nothing transcribed between "we"
16 and "weighted"?

17 A. That would be anything other than
18 a complete speculation? No.

19 Q. If you look towards the bottom of
20 the page you see the comment, the quotations or
21 the words attributed to Mr. Madoff starting with
22 "two more entities." Do you see that?

23 A. Yes. Yes, I do.

24 Q. Do you recall having Mr. Madoff
25 saying this to you, what's listed here on 385?

1 A. Which will take not a lot of time,
2 or do you want me to read it?

3 Q. I want you to take a look to be
4 able to identify it and then I'll ask you
5 specific questions.

6 A. Okay. But you don't want me to
7 read it first? That's going to take a lot
8 longer than to identify it.

9 Q. Yes. Just be able to identify it,
10 first.

11 A. I'm ready to identify it.

12 Q. What is it?

13 MR. STEINER: As I'm sure Mr. Song
14 will tell you, if you want to read the whole
15 thing or feel like you need to read any parts of
16 it answering his questions, you should.
17 Certainly feel free to do so.

18 MR. SONG: That's correct.

19 MR. STEINER: If you want to hear
20 his questions about specific parts first, that's
21 fine.

22 A. I'm sure Mr. Song would say the
23 same thing.

24 Q. And I do so.

25 Mr. Merkin, do you recognize the

1 documents listed 364 through 373?

2 A. It purports to be a transcription
3 of a recorded telephone conversation between me
4 and Mr. Madoff.

5 Q. And is the date on or about
6 January 14, 2002?

7 A. Yes.

8 Q. And do you recall having a
9 conversation with Mr. Madoff on or about this
10 date?

11 A. If you had not handed me this
12 document first?

13 Q. Yes.

14 A. No.

15 Q. Do you know whether or not Ms.
16 Ferro transcribed this conversation?

17 A. I'm guessing that she did. Do not
18 know for sure.

19 Q. Would anyone other than Ms. Ferro
20 have transcribed conversations for you?

21 A. Might have. Depends who else was
22 in the office, depends who was around, depends
23 who was available. She wasn't the only person
24 who could have transcribed it.

25 Q. Again there's a listing of a "B"

1 and an "E" here as to speakers. Do you see
2 that?

3 A. (Witness nods.)

4 Q. Is it still your understanding
5 that the "B" is Mr. Madoff and the "E" is you?

6 A. Yes.

7 Q. Could you turn to page 365, it's
8 the second page. Towards the bottom you see
9 where there's a handwritten note?

10 A. Um-hum.

11 Q. Do you know whose handwriting that
12 is?

13 A. I don't. It's not mine. And the
14 rest is a speculation.

15 Q. Going back to 364.

16 A. 360?

17 Q. 4.

18 A. Got it.

19 Q. In the first paragraph you see
20 Mr. Madoff is saying, why anybody would feel
21 that they don't have transparency as to the
22 strategy. Do you see that?

23 A. No. Oh, it's the very beginning.

24 Q. Very beginning.

25 A. Um-hum. Okay.

1 Q. And you respond: "Actually,
2 Bernie, all the better for you. The worse for
3 me."

4 A. Yes. Yes, that's what that says.

5 Q. Do you know what that means?

6 A. I can speculate today what that
7 refers to.

8 Q. To the best of your recollection,
9 do you know what that means?

10 A. This statement to which this is
11 responding --

12 Q. Yes.

13 A. -- is the middle of the
14 conversation. Our telephone conversation did
15 not start by Mr. Madoff getting on the phone and
16 saying why anybody would feel that they don't
17 have transparency. I can't imagine. That's not
18 how conversations start.

19 So I can speculate what the
20 subject of that is and why that's the response
21 and what about the fact that's alluded to above
22 makes Bernie's life easier and my life harder,
23 but I don't have an independent memory of that
24 today. So, if you want the independent memory,
25 I don't have one.

1 Q. What is your understanding today
2 of what that means?

3 A. My guess today, my speculation
4 today is Bernie first says, how can anybody
5 think they don't have transparency. Meaning
6 they have the transparency as to the strategy,
7 they get the confirmations. Then he stops in
8 the middle of the sentence and says, actually,
9 no, that's not true. Meaning he knows that
10 there are limited partners or, if that's the
11 proper structure, in the pooled vehicle who
12 don't get the tickets. In other words, don't
13 get the confirmations. Let's not use the word
14 tickets. Who don't get confirmations and don't
15 have that kind of transparency, so he says, oh,
16 that's not true -- actually you -- what do you
17 need me to go back over?

18 So they don't get the
19 confirmations. I do. He says, actually, you
20 know that's not true, actually you have the
21 transparency, Ezra has the transparency, they
22 don't. Now I understand. I'm not sure what he
23 now understands. It's a reference to something
24 that I said before that he now understands but
25 there's no recording of what I said before. And

1 to save you the question, I don't have a clue
2 what I said before in terms of what I remember
3 of this conversation.

4 Q. Okay.

5 A. So I say to him, yes, the better
6 for you, the worse for me, meaning they're my --
7 they're now my clients, not his clients. His
8 customer is the funds, my clients are my limited
9 partners and because I do have the transparency
10 I have to explain to them what the strategy is
11 about and what we're doing and so on and so
12 forth. But at least I have the transparency to
13 do so. This is significant. That's my
14 speculation as to what those three lines mean.

15 Q. And in the fourth entry down, the
16 second one that's attributed to you, do you see
17 where it says, if I get it wrong by more than
18 plus or minus 25 million --

19 A. I'm not with you, sorry.

20 Q. Oh.

21 A. How far down the page?

22 Q. Top quarter, top quarter of the
23 page. And you see where -- let me go one
24 sentence down, it says if someone asks me what
25 Bernie is managing --

1 Goldman and Morgan does to help corporate
2 clients either raise money, raise debt, raise
3 equity, sell themselves, buy something else,
4 help them buy somebody to intake them private or
5 help themselves go private.

6 So that on his list of names he
7 had no impairments as to what he could own in
8 the basket.

9 If it's transcribed, I can
10 probably find it for you, but then you have to
11 let me read the whole thing.

12 Q. Well, we'll see if we can find it
13 at some point today.

14 A. Okay.

15 Q. If you go to the next page and you
16 see the second B where Mr. Madoff says: "What
17 would you say if I told you I don't make 1-1/2
18 percent"?

19 A. Um-hum.

20 Q. Do you know what he's referring to
21 there?

22 A. In the paragraph above it?

23 Q. I'm trying to see if you can
24 explain to me what he's referring to.

25 A. Um-hum.

1 Yeah, so this is a conversation,
2 this is a link in a conversational chain that
3 we've had for a long period of time, which is
4 what is Bernie making on his money management
5 business expressed as a percentage of those
6 assets.

7 Q. And here he's telling you it's
8 1-1/2 percent?

9 A. I don't know if that's exactly
10 what he's telling me.

11 Q. Or less than 1-1/2 percent?

12 A. The suggestion is it's in the
13 1-1/2 percent or somewhat less ballpark.

14 Q. And did you wonder why Mr. Madoff
15 didn't organize himself as a pooled vehicle?

16 A. Yes.

17 Q. And what was Mr. Madoff's
18 explanation for that?

19 A. I think it's in one of these --
20 certainly one of the conversations, but I think
21 I remember it having been transcribed. It's not
22 the way he wanted to do business. He had very
23 decent margins in terms of what he was doing in
24 the money management business.

25 In addition to those margins or,

1 sound of his voice, I don't know.

2 Q. Other than in this conversation
3 with Mr. Elden, did you have any conversations
4 with any other BLMIS investor where you
5 discussed a Ponzi scheme?

6 MR. STEINER: Objection to form.

7 A. I didn't discuss Ponzi scheme. I
8 wasn't the person who said anything about a
9 Ponzi scheme.

10 Q. Did any other BLMIS investor other
11 than Mr. Elden ever mention Ponzi scheme to you
12 in the context of BLMIS?

13 MR. STEINER: Objection to form.

14 A. Not that I recall.

15 Q. You can put that one aside and
16 we're going to turn to 368.

17 A. 368?

18 Q. Yes.

19 A. So this is part of this? Yes.
20 Okay.

21 I know you're Nancy. Are you
22 Nancy Bendish?

23 THE REPORTER: Yes.

24 Q. Trustee's 368 is a transcription
25 of an audio file produced to us as bd.mp3.

1 A. Um-hum.

2 Q. We're going to try to do the same
3 exercise. Put on the headphones, we'll play it.

4 A. All right. Let me set up these
5 things here.

6 MR. STEINER: Brian, are you going
7 to give us the -- I know you did some sort of
8 enhancement, are you going to give us copies of
9 that?

10 MR. SONG: Yes. That's what these
11 are. Short answer is yes.

12 MR. STEINER: I don't need it
13 right now. I thought that you did something to
14 the audio to try to enhance the quality.

15 MR. SONG: Tried to enhance the
16 quality by minimizing some of the background
17 noise, but, yes, we'll get you that.

18 Q. Are you ready?

19 A. Yeah. I took them off because it
20 sounded like you guys were talking.

21 MR. SONG: Oleg, go ahead.

22 (Audio played.)

23 A. Wait, wait. Can we start that
24 again? I didn't get it from the beginning, I
25 don't think.

1 (Audio played.)

2 A. Wait, I'm sorry. I don't want to
3 be difficult. Doesn't somebody say something
4 about Thursday, twice?

5 Q. I don't hear that, but...

6 A. It sounded like something about
7 Thursday and then something about Thursday. So
8 that's why I thought I was reading the wrong
9 transcript. "I'm here to start that" is somehow
10 Thursday? I don't know. I haven't heard this
11 before, I don't think.

12 Q. We're on the right transcript. It
13 could be you have a better ear for the voices
14 than the rest of us did.

15 A. Okay. But it's repeated. Anyway,
16 doesn't matter.

17 Q. Start from the beginning.

18 A. Somebody agrees with me.

19 (Audio played.)

20 A. Okay.

21 Q. Mr. Merkin, were you able to
22 identify Male Voice number 1?

23 A. Yes, Male Voice number 1 is
24 Mr. Madoff.

25 Q. And is Male Voice number 2 you?

1 A. I think so. No, no, sorry.

2 Q. Well, let me ask one question.

3 A. No, I think this is wrongly
4 transcribed in that case.

5 Q. I want to clarify it with you.
6 Lines 11 and 12.

7 A. 10, 11 and 12 identified here as
8 Male Voice number 1 is me.

9 Q. Is you.

10 A. Right. In addition to that, after
11 the word "specific" I say the word
12 "proposition," I believe, although I'd have to
13 listen to it again.

14 So here Male Voice number 2 is
15 Mr. Madoff. What follows from Male Voice number
16 1 is Mr. Madoff. It's still Mr. Madoff. I
17 think, I have to listen to this again because I
18 don't want to say this for sure without hearing
19 it a second time.

20 Q. Sure.

21 A. But that's what I got. And then
22 so -- so I don't understand the beginning, that
23 I, I'm here to start that, right, exactly,
24 right, I didn't catch any of that the way it's
25 transcribed. I'm not sure that's what it says.

1 Q. Okay.

2 A. I want to listen to the whole
3 thing again before I -- and you know something,
4 if it's okay, can I just borrow this for a
5 moment?

6 Q. Sure.

7 A. Can I write notes on this or do we
8 have to put this into evidence, the whole thing?

9 Then, you know what, thank you so
10 much for your loan of the pen.

11 Q. I will stipulate that I will not
12 mark your notes on this document.

13 A. I was just going to scribble in
14 "proposition" because I heard it and I didn't
15 have a pen. So let me listen to the whole thing
16 again.

17 Can I ask another question, can
18 you play it more slowly or that doesn't work?

19 Q. Doesn't work. We can play it
20 multiple times and, believe me, we've played it
21 multiple times.

22 A. Okay, I'm just asking. It's all
23 right.

24 Makes me wonder about the quality
25 of the transcription of the ones that we did,

1 that we looked at before and how accurate they
2 really are. Things that a transcriber thought
3 were said that may have said something else
4 entirely.

5 (Audio played.)

6 A. Hold that, hold that, hold that.
7 Okay. You would make my life much easier, I
8 hear him saying, if I don't do that. Didn't he
9 just say that?

10 Q. Yes, that's after the um-hum.

11 A. No, it's not. It's before the
12 um-hum. Am I talking too loud?

13 Q. No.

14 A. Because I could really, I can
15 really barely hear you.

16 He says, I would, it would make my
17 life much easier. Could I do this without these
18 on so we can all do this together?

19 Q. Sure.

20 A. If it's not important, Brian, I'm
21 happy to pass.

22 Q. I want to get your recollection
23 and your identification of these voices.

24 A. I now really am borrowing this.

25 MR. STEINER: Here, write on this

1 as opposed to the exhibit.

2 THE WITNESS: Ever see a guy that
3 devoted to a client? Throws his stuff in front
4 of -- yes, sorry.

5 MR. BITMAN: Ready?

6 THE WITNESS: Yup. But you've got
7 to stop it when I say stop it, okay?

8 MR. STEINER: It's Oleg, it's not
9 the videographer.

10 THE WITNESS: Oh, it's Oleg.
11 Oleg, how are you buddy? Okay.

12 (Audio played.)

13 A. It's just repeated.

14 (Audio played).

15 A. Stop. So what happened to "if I
16 don't do that"? It's not here. It says, it
17 would make my life much easier, dot dot dot.

18 Q. And he interrupts with an um-hum.

19 A. Oh, okay. So let's forget the
20 um-hum. So Male Voice 1 and Male Voice 1 there
21 is Madoff.

22 Q. Okay.

23 A. Okay. We'll turn this into a skit
24 before we're done here.

25 Okay. Thank you. You want to

500

1 pick it up from where we left it off or you want
2 to go back to the beginning?

3 MR. BITMAN: Up to you.

4 A. It's up to Brian.

5 (Audio played).

6 A. Stop, stop. "If I don't do that"
7 is the end of Madoff. Okay. "You have no idea
8 how interested I am as a general and specific
9 proposition," I believe I will add, "in making
10 your life easier."

11 Who am I, 2 or 1?

12 Q. You are 2.

13 A. Okay, you want to do this E and B?

14 Q. Sure. As long as you're
15 identifying that sentence as your voice.

16 A. Okay. 2 starts again with you
17 have no idea, but I want to hear it again.

18 THE REPORTER: You've got to slow
19 down.

20 THE WITNESS: I forgot, I forgot,
21 I'm sorry.

22 A. We're going to go back to "if I
23 don't do that." That is Bernie for sure.

24 Q. So line 10 is Mr. Madoff?

25 A. Right. Then line 11 I believe is

1 me but I'd like to hear line 11 again.

2 (Audio played.)

3 A. Stop. Okay, that's me.

4 Q. So 11 and 12 are you?

5 A. Right. Now we're up to 13.

6 (Audio played.)

7 A. Okay. So I didn't catch line 13
8 and I would argue it doesn't matter.

9 Q. Okay.

10 A. If you want me to hear it again,
11 I'll listen to it again.

12 Q. No, that's fine.

13 A. I didn't even hear the word "okay"
14 but it doesn't matter. It's just an
15 interruption or it's a vocal pause.

16 Q. Is line 14 through 19 Mr. Madoff?

17 A. Yes.

18 Q. And is lines 21 through 23
19 Mr. Madoff?

20 A. Yes.

21 Q. Now that we've gotten that out of
22 the way.

23 A. Now it makes more sense.

24 Q. Do you recall having this
25 conversation with Mr. Madoff?

1 A. A version of this conversation. I
2 recall something like this, yes.

3 Q. What is this conversation about?

4 A. I think he's turning me down on
5 something, okay, and he's saying, very politely,
6 no.

7 Q. Do you recall what that something
8 was?

9 A. What's the subject of the
10 conversation?

11 Q. Yes.

12 A. I'm not sure. If -- there's some
13 possibility I wanted more capacity and he's
14 saying, you know, the whole idea of doing this,
15 it doesn't matter to you, doesn't matter, I
16 don't want -- not going to change your
17 lifestyle, then I'm not gonna, I'm just gonna
18 pass.

19 Q. If you could slow down a little
20 bit for Nancy's sake.

21 THE REPORTER: I'm going to need a
22 vacation after this deposition.

23 THE WITNESS: I didn't tell you we
24 have to do this for another two days?

25 MR. SONG: That's on the record,

1 Neil.

2 THE WITNESS: That was an
3 interrogatory.

4 Q. Did you ever have --

5 A. But it's also very possible that,
6 and perhaps even more likely, that we had had
7 ongoing conversations over the years about his
8 doing a program for us in LEAPS, and at some
9 point he definitely communicated to me that he
10 didn't want to do the LEAPS. He had looked into
11 it, the market was too small for his overall
12 book, he might have done it for us and perhaps
13 one or two other persons because it might have
14 been large enough to accommodate a very small
15 fraction of his overall book, and then in the
16 end the decision was he was going to pass
17 entirely.

18 What I remember is the pass
19 entirely sort of rings a distant bell.
20 Lifestyle is a theme that comes in other
21 conversations. So, I think this is -- my guess
22 is this is a decent likelihood that this is
23 where he turns me down on doing LEAPS.

24 Q. Did you also have any discussions
25 with Mr. Madoff regarding a leveraged product?

1 A. Yes.

2 Q. Did Mr. Madoff ever tell you that
3 he was not interested in doing a leveraged
4 product?

5 A. No. Mr. Madoff gave us a lot of
6 green light on the leveraged product and we
7 thought we had identified the source of credit
8 for the leveraged product, which is what you
9 need to have a leveraged product in the identity
10 of two very large established French banks or
11 their New York offices and they ran a whole
12 program of due diligence on Madoff and got to,
13 yes, as did, obviously, he or wouldn't have
14 started.

15 In the end that idea failed to
16 happen. We never did a leveraged product
17 because the cost of the debt I thought was too
18 high relative to, as a range, what might have
19 been the expected returns.

20 Q. Now, if you can turn to Trustee's
21 369, which is the last of these transcripts.

22 A. How many transcripts are there?

23 Q. There's three.

24 A. So this is a fourth document
25 that's not a transcript?

1 MR. STEINER: No. You have mine
2 that you were writing notes on.

3 Q. You have Mr. Steiner's which is
4 not a Trustee marked exhibit.

5 THE WITNESS: Sorry about that.

6 Q. So if you can turn to Trustee's
7 369, which is a transcript of audio file 1 --

8 A. So we just did 368.

9 Q. We just did 368.

10 A. Okay, that's my confusion. Thank
11 you. Got it.

12 Q. This is a transcript of an audio
13 file 1bf.mp3. Try this one more time.

14 A. Are we still doing this?

15 Q. Yes.

16 A. Oh.

17 Nancy is psyched; she doesn't have
18 to write for a while.

19 (Audio played.)

20 A. Okay.

21 Q. Mr. Merkin, can you identify who
22 Male Voice number 1 is?

23 A. Yes. That's Mr. Madoff.

24 Q. And then on line 5, do you see
25 where it says "auto flow phonetic"?

1 A. Yes.

2 Q. Should that be order flow?

3 A. Might be. I mean, I was --
4 wouldn't say that it is, but certainly might be.

5 Q. And are you able to identify Male
6 Voice number 2?

7 A. Yes. That's me.

8 Q. And do you recall having this
9 conversation with Mr. Madoff?

10 A. Not specifically, no.

11 Q. Do you know what your -- next page
12 where you reference Bayou.

13 A. Do you have some idea what is said
14 on line 22?

15 Q. I do not.

16 A. Okay.

17 Q. That's why the dashes are there.

18 A. Can possibly figure that one out.

19 Q. See on page 3 you reference Bayou.

20 A. Um-hum.

21 Q. What is Bayou?

22 A. Let me just say that line 3, as I
23 listened to it very quickly I thought I said I'm
24 sure you got one or two. But I could listen
25 again and tell you if that's what I really said

1 or not. And it doesn't make a lot of difference
2 but that's what I heard rather than "one too."

3 Q. Okay. Why don't we play it again
4 and you can put your headphones on or you can
5 listen.

6 A. Okay.

7 (Audio played.)

8 A. Could you just hold for a second?
9 Where it says we should reinstitute dash dash
10 dash dash, it's something for order flow. You
11 see that line 12?

12 Q. Um-hum.

13 A. You want to play it again? I'm
14 asking you, you don't have to. It's up to you,
15 Brian.

16 Q. I want to get it as accurate as
17 possible.

18 A. If that's what you want, then do
19 you mind playing that again.

20 (Audio played.)

21 A. Stop. I think that's what it
22 says.

23 Q. Okay.

24 A. Not sure, but I think that's what
25 it says.

1 Okay, go ahead. Sorry, line 14.

2 (Audio played.)

3 Q. My original question was what is
4 Bayou?

5 A. I'm not sure if it's one or two;
6 it could be "one too." This transcript could be
7 correct.

8 Q. Okay.

9 A. Bayou is a -- was a fund, you'll
10 do a better job in supplying the date than I
11 will, that ended up in scandal, the details of
12 which I don't remember at the moment, but I
13 think monies were stolen, people went to jail,
14 so on and so forth.

15 Q. Do you recall having conversations
16 with Mr. Madoff regarding Bayou, other than in
17 this transcript?

18 A. I do.

19 Q. And what were those conversations?

20 A. I recall his -- maybe this is the
21 conversation I recall, something about when
22 there's a scandal or a scam I guess is the word
23 that's used here in the hedge fund industry
24 questions come up about other managers
25 routinely. One of those managers -- questions

1 come up about a lot of funds, about a lot of
2 different strategies. At that time I was
3 sitting on investment committees and so the
4 investment committee people would ask, well,
5 Bayou -- none of the committees that I chaired
6 had investments with Bayou. So we weren't
7 focused on Bayou, Bayou was not a particularly
8 big issue for those committees or in my office.

9 But an issue with a fund might
10 provoke questions about other funds, and
11 questions might easily come up about Bernie
12 because so many of the persons who were
13 investors of his didn't have the transparency.
14 They just got a number, so at that point you
15 would say, you might if you were the recipient
16 of that information, here is at least something
17 that looks -- that all I have is a number. Do I
18 have any evidence of the trades.

19 So that's why, as people reacted
20 to a scam by saying, oh, let's try to figure out
21 if all of my money is safe in all these other
22 places, you get lots of questions about other
23 places, and questions about Bernie as well.

24 I just must say, Bernie sounds
25 incredibly relaxed about the whole thing, as I

1 listen to it today. Where you can sort of hear
2 him a little bit kind of working the con, in a
3 way.

4 Q. Did you do anything as a result --
5 did you change your due diligence practices as a
6 result of Bayou?

7 A. I don't -- I certainly spent time
8 talking to Madoff about issues that related to
9 Bayou. I'm not sure that we announced a whole
10 new revision to our due diligence procedures.

11 MR. SONG: Now is a good point for
12 a break.

13 THE VIDEOGRAPHER: Off the record
14 2:52 p.m.

15 (Recess taken.)

16 THE VIDEOGRAPHER: Back on 3:12.

17 BY MR. SONG:

18 Q. Mr. Merkin, if you could turn to
19 Trustee's Exhibit 354 and go to page 5 of that
20 exhibit. First full paragraph, within that
21 first full paragraph there's a discussion of the
22 meetings that you arranged and participated
23 between Mr. Madoff and certain investors in the
24 funds. Do you see that?

25 A. Starting with the third sentence?

1 Q. You're not aware of a direct
2 investment with BLMIS?

3 A. I'm not aware of one but I would
4 not necessarily be aware of one.

5 Q. And what were the circumstances
6 related to the meeting that you set up between
7 Mr. Bravmann and Mr. Madoff?

8 A. Don't remember.

9 Q. Do you recall what time frame this
10 was in?

11 A. No.

12 Q. Did you attend that meeting?

13 A. I don't remember.

14 Q. Did you have -- did you take any
15 notes of that meeting?

16 A. I don't remember.

17 Q. And do you know if you have any
18 documentation at all evidencing this meeting?

19 A. Did we produce any, may I ask?

20 Q. Would you have had an email, say,
21 with Mr. Bravmann setting up the meeting?

22 A. I might have. I don't know. I
23 would not testify that we didn't but I don't --
24 I don't know that that's the way it would have
25 happened. It may have just been telephone calls

1 that, for all I know, my secretary did and got
2 the times that worked for both of them.

3 They were -- they meaning neither
4 Mr. Bravmann or Mr. Madoff, as best as I can
5 remember, were very big on emails.

6 Q. The next two names on the list
7 here are Alec Hackel and Christof Reichmuth. Do
8 you see those?

9 A. I do.

10 Q. Who is Alec Hackel?

11 A. Alec Hackel is a, I think, German,
12 of German origination, possibly a spot of South
13 Africa in there as well, very senior figure in
14 the commodities industry at Philip Brothers and
15 at Marc Rich & Company, who was based, in
16 relevant times, in Zug, Switzerland or in
17 Meggen, Switzerland and was, I think, the
18 chairman of the board, but certainly the senior
19 figure from the point of view of the
20 capitalization of a money management operation,
21 later licensed Swiss bank, called Reichmuth &
22 Company that had been started by Christof
23 Reichmuth's father Carl.

24 And perhaps to save you some
25 questions, at which Patrick Erne, which is the

1 I would have conjectured 2000 but, you know,
2 it's not a different -- not a completely
3 different answer.

4 Q. Do you recall attending the
5 meeting with Mr. Reichmuth and Mr. Madoff?

6 A. I recall attending meetings at
7 Mr. Madoff's office with various members of the
8 Reichmuth staff. I'm not sure I remember this
9 one specifically.

10 Q. Okay. Do you recall what the
11 purposes were of the -- do you recall what the
12 purposes of the meeting between Mr. Reichmuth
13 and Mr. Madoff were?

14 A. Broadly speaking, Reichmuth &
15 Company had money management clients, of which
16 possibly Mr. Hackel was one and then had a whole
17 series of clients who I didn't know, and they
18 had -- over a period of time were in the process
19 of setting up at least one and probably two what
20 became fairly large fund of funds.

21 In the first one, chronologically,
22 they had a very large position relative to the
23 size of the fund in Ascot Fund Limited.

24 Q. Did you ever tell Mr. Reichmuth
25 that BLMIS only acted as a broker for Ascot

1 A. It looks like an email from me to
2 Mike.

3 Q. And below that is an email between
4 you and Mr. Igolnikov on March 13th, 2004?

5 A. Um-hum. Yes.

6 Q. Does this email indicate to you
7 that Mr. -- you had already had the meeting
8 between Mr. Igolnikov and Mr. Madoff at this
9 point?

10 A. It suggests that it probably had
11 taken place.

12 Q. You see where it says, "I
13 appreciate very much your effort in putting our
14 meeting together"?

15 A. Right. Not clear from that
16 sentence that the meeting was either a week
17 earlier or was coming the next week.

18 Q. Around this time period you recall
19 having a meeting with --

20 A. Right. My guess is this is the
21 thank you note.

22 Q. And do you recall what the purpose
23 of this meeting was?

24 A. Largely the same as other
25 purposes. Roman wanted to meet with Mr. Madoff.

1 It sounds like he may otherwise have had some
2 difficulty in doing so from the third sentence,
3 and was appreciative of the access and of the
4 meeting.

5 Q. To your understanding was this the
6 first time Mr. Igolnikov met with Mr. Madoff?

7 A. I don't remember, if I knew.

8 Q. Do you recall -- did you attend
9 that meeting between Mr. Igolnikov and
10 Mr. Madoff?

11 A. I don't remember.

12 Q. Did Mr. Igolnikov ask to bring
13 anyone with him to the meeting?

14 A. I don't remember.

15 Q. Did you ever tell Mr. Igolnikov
16 that BLMIS does not take visitors?

17 A. Did I ever tell that to Roman?

18 Q. Yes.

19 A. While setting up a meeting?

20 Q. Yes.

21 A. No.

22 Q. Did you tell Mr. Igolnikov that it
23 was a big deal for you to take him to see
24 Mr. Madoff?

25 A. No. Certainly not that I

1 A. That's what I think that says.

2 Q. What are you referring to here by
3 "block box"?

4 A. Oh, black box here means what
5 perhaps, in a word, Mr. Sheehan referred to
6 yesterday as algorithm.

7 Q. Isn't that the proprietary trading
8 strategy that Madoff purportedly had?

9 A. Well, it's about it, yes. But I'm
10 saying it's the algorithm, it's the black box.
11 This has nothing to do now with transparency.
12 This has to do with, as this suggests, the years
13 of following market patterns helped the firm
14 perfect its, if you will, entry and exit cues.

15 Q. Okay. Other than this call on
16 November 7th, did you have another call --

17 A. And then that's consistent with
18 constantly spend money improving that system.

19 Q. Okay. And the notes "and would
20 hope to visit," is that "Mr. Madoff's offices"?

21 A. Yes.

22 Q. "This month."

23 A. "Later this month," yes. Sorry.
24 That says 885 there.

25 Q. During this call or, actually, did

1 here in the next 20 minutes or so.

2 Let me get tab 8, 6, 7 and I guess
3 there should be 9.

4 MR. STEINER: But not 6, 7, 8 and
5 9?

6 A. This goes back to yesterday,
7 right, Brian?

8 MR. STEINER: Doesn't matter.

9 MR. SONG: Doesn't matter. It's
10 all one.

11 Q. Doesn't matter.

12 (Comments off the record.)

13 (Exhibit Trustee 375 marked for
14 identification.)

15 Q. Mr. Merkin, before we get to the
16 exhibit, you testified I believe yesterday
17 regarding personal exposure that you and your
18 family had through the defendant funds to BLMIS.
19 Do you recall that testimony?

20 A. I think I -- if I know what you
21 are referring to, not that I'm reading your mind
22 here, yes, I do.

23 Q. You said -- I believe you said
24 that you had somewhere 110, \$120 million in
25 exposure; is that right?

1 A. I don't think I said quite that,
2 no. I think I said I don't think it was as high
3 as 120. I think it might have been something
4 closer to 110, 112, something like that. Across
5 the --

6 Q. Across the defendant funds?

7 A. Right.

8 Q. The court reporter has handed you
9 what's been marked as Trustee's Exhibit 375.
10 What I would like to do is try to figure out
11 exactly where the exposure lies.

12 And let me say for the record
13 Trustee's 375 is Bates number GCC-P 0463582. It
14 is a native file, which is why the Bates number
15 doesn't appear on the document.

16 Mr. Merkin, do you recognize
17 Trustee's 375?

18 A. Does recognize mean have I seen
19 this before and therefore can recognize it?

20 Q. Yes.

21 A. I don't really know. It says it's
22 a list of the Ascot Partners LP investor capital
23 accounts.

24 Q. But you haven't seen this document
25 or another document like it before?

1 A. I'm not sure. I'm not sure I've
2 seen this document before.

3 Q. Okay. Could you turn to the last
4 page of the document.

5 A. The very last page of the
6 document?

7 Q. Yes.

8 A. Sure. Okay.

9 Q. Do you see that there's, at the
10 bottom of the page, certain entities that are
11 broken out from the other limited partners?

12 A. Yes.

13 Q. Is it your understanding that
14 these entities listed here are associated with
15 either you or your family?

16 A. You're talking about lines 234 to
17 238 or maybe I should say 240?

18 Q. Yes.

19 A. Yes.

20 Q. And the first one there is listed
21 as Hobby Farm. What is Hobby Farm?

22 A. It's some form of a family trust,
23 I think.

24 Q. Were you including Hobby Farm's
25 investment in Ascot Partners in the \$110

1 million?

2 A. Likely, yes.

3 Q. Then the next one is Lauren
4 Merkin?

5 A. Yes.

6 Q. And Ms. Merkin is your wife,
7 correct?

8 A. Yes.

9 Q. And you're including that amount
10 as well?

11 A. Yes.

12 Q. And then there is -- there's your
13 name listed. You see that?

14 A. Yes.

15 Q. Is that you as a limited partner
16 or as a general partner?

17 A. I don't know. Does it say? I
18 don't remember preparing this document so I
19 can't really tell you.

20 Q. Okay.

21 A. Does this say -- I don't know. It
22 doesn't say. Well, I've got to go back to the
23 middle of it, I guess, to check.

24 Q. And then below your -- and you're
25 including --

1 A. Sorry, sorry, sorry, I was
2 checking something else. I'm with you now.

3 Q. You're including the amount listed
4 next to your name in the \$110 million?

5 A. I don't remember doing this
6 exercise quite this way, but I would imagine I
7 did. Seems to me very likely that I included
8 things in my own name.

9 Q. Okay. And then you see LKM 2000
10 Trust?

11 A. Yes.

12 Q. What's the LKM 2000 Trust?

13 A. It's a trust that I think relates
14 in some form to Lauren K. Merkin.

15 Q. And the investments in LKM Trust
16 is included in the 110 million?

17 A. Yeah, I mean they're not -- the
18 next three investments are not terribly --

19 THE REPORTER: I'm sorry, I can't
20 hear you.

21 A. Yes, they are included.

22 Q. And then below that is JEM 2000
23 Trust?

24 A. Yes.

25 Q. And that's a trust associated with

1 you?

2 A. I think so.

3 Q. And the investment by JEM Trust in
4 Ascot Partners is included in the 110 million?

5 A. I would think so.

6 Q. Go back two pages.

7 A. One moment.

8 Q. Can you see, if you can look at --

9 A. Two pages?

10 Q. Two pages.

11 A. Sorry. I went back one.

12 Q. There are two entities listed by
13 154 and 155.

14 A. One moment, sir. Okay, I'm with
15 you.

16 Q. Do you see 154 and 155?

17 A. I do.

18 Q. Merkin Trusts and Merkin Trusts 2?

19 A. I do see both.

20 Q. Do you know what those entities
21 are?

22 A. Not off the top of my head.

23 Q. Do you know whether that, the
24 investments by Merkin Trusts and Merkin Trusts
25 2, are included in the 110 million?

1 A. Might very well have been, I'm not
2 sure.

3 Q. Are there any other investors that
4 you know of, limited partners in Ascot Partners
5 that are associated with you that you include in
6 your 110 million dollar loss?

7 A. I don't know. There might be.

8 Q. Going back to the last page, 218.

9 A. Just take the clip off, just to
10 make it easier.

11 Yes.

12 Q. Sylvia Korngold.

13 A. One moment. Okay, I'm with you.

14 Q. Do you know who Sylvia Korngold
15 is?

16 A. She is my mother-in-law.

17 Q. Are you including Ms. Korngold's
18 loss?

19 A. Might have been.

20 Q. Under the terms of Ascot Partners'
21 offering memorandum, were you required to have
22 at least one percent of Ascot Partners assets
23 under management invested with the fund?

24 MR. STEINER: Object to the form.

25 A. I don't remember.

1 Q. Are you familiar with a schedule
2 K-1?

3 A. Broadly speaking, yes.

4 Q. What's your understanding of a
5 K-1?

6 A. A K-1 is a document I believe
7 filed with the Internal Revenue Service and sent
8 to individual limited partners as to taxes they
9 may or may not own -- may or may not owe, o-w-e,
10 to the Internal Revenue Service for their
11 participation in a partnership in a given year.

12 Q. Are you aware whether or not a K-1
13 reflects capital contributions or capital
14 withdrawals in that given year?

15 A. No.

16 Q. No, you're not aware or, no, it
17 does not do that?

18 A. No, I'm not aware.

19 Q. Let me have 6.

20 (Exhibit Trustee 376 marked for
21 identification.)

22 Q. Mr. Merkin, the court reporter has
23 handed you what's been marked as Trustee's 376,
24 GCC-P 0463580. Again, this has been produced to
25 us natively, which is why the Bates numbers do

1 not appear on the page.

2 Mr. Merkin, do you recognize 376?

3 A. I can tell you what it purports to
4 be.

5 Q. What does it purport to be?

6 A. It looks like it is the capital
7 account summary of the shareholders or the
8 registered names of the shareholders in Ariel
9 Fund Limited.

10 Q. It's as of November 30th, 2008?

11 A. I don't know. If that's indicated
12 here, I haven't found it yet.

13 Q. See up at the top --

14 A. Yes, it is so indicated.

15 Q. And did there come a time that you
16 decided to defer your incentive and management
17 fees in Ariel?

18 MR. STEINER: Objection to form.

19 A. Ask me the question again, please.

20 Q. Did there come a time in which you
21 decided to defer payment of your incentive and
22 management fees associated with Ariel?

23 A. I think the answer to that is yes
24 and no.

25 Q. Okay. Could you elaborate on the

1 yes and no.

2 A. I think we tried to defer -- or we
3 deferred the incentive and not the management.

4 Q. If you turn to the last page of
5 376.

6 A. Okay. One moment. Yup, got it.

7 Q. Do you see the two listings for
8 Merkin deferral and Merkin deferral - directed?

9 A. I do.

10 Q. Do you know what the -- do you
11 know what those accounts reflect?

12 A. I'm not sure what your question
13 is. What do you mean what do they reflect?

14 Q. What is Merkin deferral and Merkin
15 deferral - directed?

16 A. Those -- that is -- I don't know
17 what this piece of paper exactly pulls together
18 or not, but it suggests an account of some sort
19 or a, perhaps a liability of some sort from the
20 fund to Merkin deferrals. Is this Ariel?

21 Q. Yes.

22 A. Of something like 285 or 286 or 7
23 million dollars.

24 Q. And that \$287 million that's
25 listed here, is that your total deferred

1 compensation?

2 MR. STEINER: Objection to form.

3 Q. As of November 30th, 2008?

4 A. I don't know. It could be. I'm
5 just not sure.

6 Q. And did you include some
7 percentage of this 2 -- of your deferred
8 compensation in Ariel as part of your -- part of
9 the calculation of your 110 million dollar
10 exposure?

11 A. Just to be precise, I'm not sure
12 or I'm -- as I sit here I don't recall that all
13 of my deferred was in Ariel. And if this was
14 all in Ariel, I would have included a percentage
15 of this as managed -- as included in the figure
16 that you asked me about.

17 Q. Do you know what percentage you
18 used?

19 A. In calculating that number?

20 Q. Yes.

21 A. No.

22 Q. But it would have reflected the
23 percentage in which Ariel was invested at BLMIS
24 as of 2000 --

25 A. Presumably, yes.

1 Q. -- summer 2008?

2 A. I don't know as of what date. It
3 would have reflected the percentage allocation
4 to the Madoff strategies, or the Madoff
5 positions.

6 Q. Did you direct any of your
7 deferred fees to be placed in Ascot Fund?

8 A. I don't believe so. Ascot Fund
9 didn't charge deferred -- it didn't charge
10 incentive fees.

11 Q. That's not my question. My
12 question was for your deferred fees in Ariel,
13 did you direct those fees to be invested
14 directly into Ascot Fund?

15 MR. STEINER: A portion of those
16 fees?

17 MR. SONG: Yes.

18 A. Oh, that wasn't the question I was
19 answering. So let me make sure I understand.
20 You're asking, take this figure and did any
21 percentage of that figure go into Ascot?

22 Q. Yes.

23 A. I don't remember. It certainly
24 might have.

25 Q. Almost there.

1 (Exhibit Trustee 377 marked for
2 identification.)

3 Q. Mr. Merkin, the court reporter has
4 handed you what's been marked as Trustee's 377.
5 It's Bates number is GCC-P 0463581. And I'll
6 purport to you that it is a native file and it
7 is also the Gabriel Capital accounts as of
8 November 30th, 2008.

9 Do you see that?

10 A. Yes.

11 Q. Now if, again, you can turn to the
12 last page of the document.

13 A. I see that.

14 Q. And you see towards the end
15 there's a listing of GP next to the J. Ezra
16 Merkin?

17 A. Yes.

18 Q. And then, did you include some
19 percentage of the amount listed, the 26 plus
20 million dollars listed to the right, in your
21 calculation of your 110 million dollar exposure
22 in BLMIS?

23 A. Likely, yes.

24 Q. And, again, the percentage that
25 you used was Gabriel's exposure to BLMIS at the

1 end of 2008?

2 A. I'm not sure as of what date, as I
3 previously answered you, but it would have been
4 the percentage of the fund's equity that was
5 allocated to the Madoff positions.

6 Q. Were there any other limited
7 partners in Gabriel as of November 2008 that are
8 associated with you or your family?

9 A. I don't know. I mean, other than
10 that one line item?

11 Q. Yes.

12 A. Might be.

13 Q. Do you know whether or not any of
14 these -- any of the limited partners listed as
15 of November 30th, 2008 were included in your
16 calculation of your 110 million dollar exposure?

17 A. I guess the answer to the question
18 is no, I don't know. They might have been.
19 Want me to run through it and tell you?

20 Q. If you can look through the list
21 and see if you can identify any.

22 A. Let's have a look. Well, the same
23 strength of something you asked me before, the
24 Korngold family is listed on line 88. That is
25 the same name as my mother-in-law's last name,

1 whom you asked me about previously.

2 Q. Yes.

3 A. I would have to go through this
4 really line by line to check. I don't -- I'm
5 not sure I can think of sort of material
6 omissions. If so, it may not be big enough to
7 chase down.

8 This is Gabriel, right? So
9 anything that's here would anyway be a
10 percentage of it.

11 Line 61, Good Partners may be a
12 family trust or a family partnership.

13 Q. Okay.

14 A. And after that, I really have to
15 go through it line by line. Which if you want
16 me to, I will, but I'm not sure it's gonna make
17 that big a difference to the overall calculation
18 of the figure that you asked about.

19 Q. To your knowledge other than the
20 accounts that we've gone over, are there any
21 other significant accounts that would -- that
22 contributed to that \$110 million?

23 MR. STEINER: And just to be
24 clear, as to some that Mr. Merkin identified as
25 to his in-laws, his testimony was he wasn't sure

650

1 whether they were included, not that they were
2 included.

3 MR. SONG: Yes. I just want to
4 make sure we covered all the big accounts that
5 would have contributed to the 110 million.

6 A. There are none that come to mind
7 at this time. I'm not sure that that means that
8 there weren't any.

9 MR. SONG: All right. Can we just
10 take two minutes?

11 THE VIDEOGRAPHER: Off the record,
12 6:29.

13 (Recess taken.)

14 THE VIDEOGRAPHER: Back on 6:36.

15 MR. SONG: Before we close, for
16 the record, we did hand out the CDs to counsel
17 with the enhanced audio files. And with that, I
18 have no further questions of Mr. Merkin.

19 MS. ARCHER: No questions.

20 MR. SIEV: Nothing, thanks.

21 MR. STEINER: You're done.

22 Thanks.

23 THE VIDEOGRAPHER: Off the record
24 6:36.

25 (Deposition concluded.)